AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

H-1B VISAS: DESIGNING A PROGRAM TO MEET THE NEEDS OF THE U.S. ECONOMY AND U.S. WORKERS

HEARING

BEFORE THE

SUBCOMMITTEE ON
IMMIGRATION POLICY AND ENFORCEMENT

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

MARCH 31, 2011

Serial No. 112–23

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://judiciary.house.gov

U.S. GOVERNMENT PRINTING OFFICE

65–488 PDF WASHINGTON : 2011

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON THE JUDICIARY

LAMAR SMITH, Texas, *Chairman*

F. JAMES SENSENBRENNER, JR., Wisconsin
HOWARD COBLE, North Carolina
ELTON GALLEGLY, California
BOB GOODLATTE, Virginia
DANIEL E. LUNGREN, California
STEVE CHABOT, Ohio
DARRELL E. ISSA, California
MIKE PENCE, Indiana
J. RANDY FORBES, Virginia
STEVE KING, Iowa
TRENT FRANKS, Arizona
LOUIE GOHMERT, Texas
JIM JORDAN, Ohio
TED POE, Texas
JASON CHAFFETZ, Utah
TOM REED, New York
TIM GRIFFIN, Arkansas
TOM MARINO, Pennsylvania
TREY GOWDY, South Carolina
DENNIS ROSS, Florida
SANDY ADAMS, Florida
BEN QUAYLE, Arizona

JOHN CONYERS, JR., Michigan
HOWARD L. BERMAN, California
JERROLD NADLER, New York
ROBERT C. "BOBBY" SCOTT, Virginia
MELVIN L. WATT, North Carolina
ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
STEVE COHEN, Tennessee
HENRY C. "HANK" JOHNSON, JR., Georgia
PEDRO PIERLUISI, Puerto Rico
MIKE QUIGLEY, Illinois
JUDY CHU, California
TED DEUTCH, Florida
LINDA T. SÁNCHEZ, California
DEBBIE WASSERMAN SCHULTZ, Florida

SEAN MCLAUGHLIN, *Majority Chief of Staff and General Counsel*
PERRY APELBAUM, *Minority Staff Director and Chief Counsel*

SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT

ELTON GALLEGLY, California, *Chairman*
STEVE KING, Iowa, *Vice-Chairman*

DANIEL E. LUNGREN, California
LOUIE GOHMERT, Texas
TED POE, Texas
TREY GOWDY, South Carolina
DENNIS ROSS, Florida

ZOE LOFGREN, California
SHEILA JACKSON LEE, Texas
MAXINE WATERS, California
PEDRO PIERLUISI, Puerto Rico

GEORGE FISHMAN, *Chief Counsel*
DAVID SHAHOULIAN, *Minority Counsel*

CONTENTS

MARCH 31, 2011

Page

OPENING STATEMENTS

The Honorable Elton Gallegly, a Representative in Congress from the State of California, and Chairman, Subcommittee on Immigration Policy and Enforcement 1
The Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Ranking Member, Subcommittee on Immigration Policy and Enforcement 2
The Honorable Lamar Smith, a Representative in Congress from the State of Texas, and Chairman, Committee on the Judiciary 4
The Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary 5

WITNESSES

Donald Neufeld, Associate Director of Service Center Operations, U.S. Citizenship and Immigration Services
Oral Testimony 7
Prepared Statement 9
Bo Cooper, Partner, Berry, Appleman & Leiden, LLP
Oral Testimony 17
Prepared Statement 19
Ronil Hira, Ph.D., Associate Professor of Public Policy, Rochester Institute of Technology
Oral Testimony 26
Prepared Statement 28
Bruce A. Morrison, Chairman, Morrison Public Affairs Group
Oral Testimony 36
Prepared Statement 38

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Material submitted by the Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Ranking Member, Subcommittee on Immigration Policy and Enforcement 47

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Prepared Statement of the HR Policy Association 75
Prepared Statement of Andrew Sherrill, Director, Education, Workforce, and Income Security, the United States Government Accountability Office (GAO) 81
Letter from Ron Somers, President, U.S.-India Business Council 98
Prepared Statement of Conservatives for Comprehensive Immigration Reform (CfCIR) 100
Letter from Lynn Shotwell, Executive Director, the American Council on International Personnel (ACIP) 101
Prepared Statement of Som Mittal, President, National Association of Software and Service Companies (NASSCOM) 103

Page

Letter from Randel K. Johnson, Senior Vice President, Labor, Immigration and Employee Benefits, and Amy N. Nice, Executive Director, Immigration Policy, the Chamber of Commerce of the United States of America 107
Prepared Statement of the National Immigration Forum 110
Prepared Statement of the Honorable Maxine Waters, a Representative in Congress from the State of California, and Member, Subcommittee on Immigration Policy and Enforcement 112

H-1B VISAS: DESIGNING A PROGRAM TO MEET THE NEEDS OF THE U.S. ECONOMY AND U.S. WORKERS

THURSDAY, MARCH 31, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION
POLICY AND ENFORCEMENT,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:05 a.m., in room 2141, Rayburn House Office Building, the Honorable Elton Gallegly (Chairman of the Subcommittee) presiding.

Present: Representatives Gallegly, Smith, King, Lungren, Gohmert, Poe, Gowdy, Ross, Lofgren, Conyers, and Jackson Lee.

Staff present: (Majority) George Fishman, Subcommittee Chief Counsel; Marian White, Clerk; and David Shahoulian, Minority Counsel.

Mr. GALLEGLY. Good morning.

The Subcommittee last held a hearing on the H-1B program almost exactly 5 years ago today. Much has changed since 2006. Demand for H-1B visas plummeted along with the great recession, especially in Silicon Valley and is only now slowly recovering.

The number of H-1B workers approved for initial employment in the computer systems design industry fell by 46 percent from about 44,000 fiscal year 2005 to 24,000 fiscal year 2009.

On the other hand, the Bureau of Labor Statistics projects that some of the fastest growing occupations over the next decade will be computer and mathematic occupations with these jobs up 22 percent overall. It is encouraging news that the median salary of H-1B workers approved for initial employment has increased by healthy amounts, going from $50,000 in 2005 to $59,000 in 2009 and $60,000 for immigrants in computer-related occupations.

Additionally, the number of visas issued to foreign students keep on growing, going from about 238,000 in 2005 to approximately 331,000 in 2009. In fact, the single biggest selling point for H-1B visas is that they allow foreign students educated in the U.S. to work for American companies rather than our competitors. As Compete America argues, "in many critical disciplines, particularly in science, math, engineering and technology, 50 percent or more of the postgraduate degrees at U.S. universities are awarded to foreign nationals. The H-1B visas allow these graduates to apply their

knowledge toward the growth of new jobs and industries in the United States."

Yet we still hear the same disturbing stories we heard years ago about American computer scientists being unable to find work, especially when they hit 35 years of age. And we still hear the dispiriting stories of Americans being laid off and replaced by H-1B workers, sometimes even being forced to train their replacements if they want to receive severance packages.

The debate persists over foreign companies being some of the biggest users of the H-1B program and utilizing a business model whereby they contract out their H-1B workers to their employers. GAO reports that a large number of H-1B complaints have been filed against such companies.

The issue certainly reached a boiling point last year. Congress approved a special $2,000 H-1B visa fee for these companies. One of our witnesses today, Don Neufeld, Associate Director of Service Center Operations at U.S. Citizenship and Immigration Services, has waded into this controversy. He issued a memo determining that in many cases the business model is not an authorized use of the H-1B program. I am sure we will hear more from Mr. Neufeld as the hearing moves on.

Finally, there is an ongoing matter of enforcement of the H-1B program. Because employers need to bring in H-1B workers onboard in the shortest possible time, the H-1B program's mechanism for protecting American workers is not a pre-arrival review of the need for foreign workers and the unavailability of American candidates. Instead the employer had to file a "labor condition application," making certain basic promises such as a promise to pay at least the prevailing wage. The Labor Department is entrusted with investigating complaints alleging noncompliance. The level of enforcement has always been problematic. The GAO has recommended that Congress grant the Department several additional enforcement tools. We should give careful consideration to these recommendations.

All this being said, I look forward to today's hearing and at this point I would move over to my good friend and the Ranking Member, Miss Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman.

In 2005 the National Academy of Sciences, the National Academy of Engineering and the Institute of Medicine published, at Congress' request, a seminal and very sobering report on the state of our science and technology industries and our eroding economic leadership in these areas. The report, entitled, "Rising Above the Gathering Storm," shows how the Nation's economic strength and vitality are largely derived from the productivity of well trained people and the steady stream of scientific and technical innovations they produce.

But after reviewing trends across the globe, the authors of the report were deeply concerned that due in part to restrictive immigration policies the scientific technological building blocks critical to our economic leadership are eroding at a time when many other nations are gathering strength.

According to the report, and I quote, "Although many people assume the United States will always be a world leader in science

and technology, this may not continue to be the case in as much as great minds and ideas exist throughout the world. We fear the abruptness with which a lead in science and technology can be lost and the difficulty of recovering a lead once lost, if indeed it can be regained at all."

Fortunately, Congress passed the America Competes Act in 2007 which we authorized again last year to address many of the educational and research challenges raised by the national academies. But, on our broken immigration system Congress has done nothing at all.

Let me just share a few quick statistics. Immigrants in the United States were named as inventors or co-inventors in one-quarter of international patent applications filed from the United States in 2006. Of U.S. engineering and technology companies started between 1995 and 2005 more than one-quarter have at least one foreign-born founder. In my district, in Silicon Valley, over half of the new companies, the start-ups, were started by immigrants. Nationwide, immigrant-founded companies produced $52 billion in sales and employed 450,000 workers alone in 2005.

Due partly to immigration, our country, with just 5 percent of the world's population, employs nearly one-third of the world's scientific and engineering researchers, accounts for 40 percent of all R&D spending and publishes 35 percent of all science and engineering articles. This leadership in science and technology, according to the Academies, has translated into rising standards of living for all Americans, with technology improvements accounting for up to half of GDP growth and at least two-thirds of productivity growth since 1946. This is because, according to the Academies, while only 4 percent of the Nation's workforce is composed of scientists and engineers, this group disproportionately creates jobs for the other 96 percent.

Based on these statistics one would think we would be jumping all over ourselves to keep bright, innovative minds in the United States. But by failing to reform our employment-based immigration laws, which have not been substantially updated in more than 20 years, we have been doing exactly the opposite. In 1977 only 25 percent of masters and PhDs in science and engineering were foreign nationals. By 2006, the majority of U.S. graduate students in these fields were immigrants. In some fields, such as engineering and computer sciences, immigrants now comprise more than two-thirds of all PhD graduates. But rather than keep the best and brightest of these U.S. trained graduates to innovate and create new jobs here at home, our laws force them to leave and compete against us from overseas.

To remain the greatest source of innovation in the world, we need to educate more U.S. students in STEM fields, that is why I championed the American Competes Act. But we also must retain more of those who actually graduate from our universities, unquestionable the best in the world. Sending these graduates home is a reverse brain drain that threatens our competitive advantage in the global marketplace. Countries around the world are increasingly scrambling to lure these talents to their shores in the global race to create new and better technologies as well as the millions of jobs that come with them.

I am glad that we are having this hearing to discuss the H-1B program and how it can help us retain the talent this country needs to stay ahead.

We will hear witnesses today discuss limitations inherent in the H-1B program as well as recent problems with the program's administration that create roadblocks and uncertainty for employers and H-1B workers alike. And we will hear witnesses talk about a lack of safeguards that leaves the H-1B program subject to abuse and manipulation by bad apple employers. We need to address these issues so that the H-1B program better serves the employers that use it while better protecting U.S. and H-1B workers alike, and there are ways to achieve this.

But I would be remiss if I did not say that the H-1B program is not the solution to America's most pressing problems. We have years long backlogs right now that are preventing H-1B workers from getting the green cards that would actually allow them to lay down roots, start businesses and invest in America. Increasing H-1B numbers can't fix this. Indeed, every day we learn of stellar scientists and engineers who pass up the H-1B visas and return home because of the uncertainty that H-1B status represents: Years in limbo, a limited ability to take promotions or other jobs, spouses unable to work, their destiny not their own. Meanwhile, Europe, Australia, Canada and even China and India are changing their laws and rolling out the welcome mats providing permanent visas and citizenship to STEM advanced degree holders. We must do the same or risk being left behind.

And I yield back, Mr. Chairman.

Mr. GALLEGLY. I thank the gentlelady.

At this time I would recognize the Chairman of the full Committee, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman and let me comment on the audience today. It is nice to see so many people who are interested in this particular subject and the interest is well deserved.

The H-1B visa program plays a vital role in our economy. It allows American employers to hire talented foreign students graduating from U.S. universities with degrees in science, technology, engineering and math fields. It gives these students a tryout period so that American employers can determine which are talented enough to deserve permanent residence. These foreign scholars are part of America's present and future competitiveness. These students have the potential to come up with an invention that can save thousands of lives or jumpstart a whole new industry. They also have the ability to found a company that can provide jobs to tens of thousands of American workers.

It appears that doctorates lead to much more invention than bachelors or masters degrees. Sixteen percent of those with doctorates were named as inventors on a patent application, while only 2 percent of those were with bachelors degrees and 5 percent of those with masters degrees were so named.

Not all H-1B visas go to workers in scientific fields. In 2009 only 35 percent of all initial H-1B approvals went to workers in computer related fields. Foreign workers are receiving H-1B visas to work as fashion models, dancers, chefs, photographers and social workers. There is nothing wrong with those occupations but I am

not sure that foreign fashion models and pastry chefs are as crucial to our success in the global economy as are computer scientists.

The 65,000 base annual quota of H-1B visas is going to come under more and more pressure as the economy improves. If Congress doesn't act to increase the H-1B cap, then we may need to examine what sort of workers qualify for H-1B visas. Congress also will have to ensure that the L and B visa programs are not abused by employers seeking ways around the H-1B cap.

No matter how generous our legal immigration system is, there will always be individuals who seek to game the process. The H-1B program has safeguards built into it to protect the interests of American workers. It is a subject of great dispute as to whether those safeguards are sufficient. The Government Accounting Office recently found that H-1B employers categorized over half of their H-1B workers as entry level, which is defined as quote, "performing routine tasks that required limited, if any exercise of any judgment," end quote, and only 6 percent as fully competent. Are all these entry level workers really the best and the brightest?

The dollar differences are not trivial. In New York City, the prevailing wage for a computer systems engineer in systems software is $68,000 for an entry level worker and are $120,000 for a fully competent worker. Are American workers losing out to entry level foreign workers?

We also need to safeguard national security. The Government Accounting Office recently found that the U.S. Government approved thousands of H-1B visas to foreign nationals from 13 "countries of concern," the names of the countries withheld for security reasons.

I am also concerned about the legacy of fraud in the H-1B program. At a hearing over a decade ago we heard about petitioning companies that were nothing more than a post office box, an abandoned building or a fictitious address and a single telephone number. We heard about H-1B workers slated for employment as janitors or nurses aides or store clerks.

Apparently, such fraud is not a thing of the past. Despite a $500 anti-fraud fee that was instituted in 2004, 2008 Office of Fraud Detection and National Security issued an assessment that found outright fraud in at least 13 percent of randomly selected cases. Still, the H-1B program usually does operate to the benefit of America, American employers, especially high tech employers, and American workers. It is the job of Congress to ensure that it always does.

Thank you, Mr. Chairman. Yield back.

Mr. GALLEGLY. I thank the gentleman.

At this time I recognize the Ranking Member of the full Committee, Mr. Conyers, for an opening statement.

Mr. CONYERS. Thank you, Chairman Gallegly.

Long ago when Zoe Lofgren was a commissioner in California, Morrison and I were working on the same problem. We were waiting for her to come along and give us the legislation that solved the problem then and solves it now. Create more green cards. And so here we are today with a lot of great witnesses trying to figure out how we do it.

The second thing is to raise the compensation for the kind of engineers that we need. A computer analyst could make $70,000 in-

stead of $50,000 and there would be a great movement toward that area.

In addition, we need a—the concept of portability in terms of being able to carry these rights from one employer to the next. Now this is a vast secret never before revealed in a Judiciary Committee hearing, employees that have H-1B visas are at the mercy of their employers. This is shocking, I know, and may require another hearing in and of itself. They work frequently at lower pay, they can't—there is no question they can't change jobs or they will be sent back.

Chairman Gallegly said that 50 percent of the engineers are foreign nationals that are graduating. We think it is even more than that. And so the most simplistic answer that we can arrive at is, fine Chairman Emeritus, just add more H-1B's. That is all we need to do and you will be okay, right? Wrong. What we need are more green cards and the bill that Morrison and I got Lofgren prepared for was to do just that, staple a green card to a foreign national's graduating certificate when he graduates from an engineering school. You would then relieve the problem of most of them ending up going back home to become our competitors when most of them didn't want to go, really wanted to stay.

So, I thank you for the hearing and I look forward to the witnesses' comments.

Mr. GALLEGLY. I thank the gentleman from Detroit.

And with this we will move on with our witnesses. We have a very distinguished panel of witnesses today. Each of the witnesses' written statements will be entered into the record in its entirety.

I ask that the witness summarize his testimony in 5 minutes, if possible, or as close to it, to help stay within the time constraints that we have. We have provided lights down there and while I am not going to be real hard on it, I just ask your cooperation so we can get through this hearing and give everyone an opportunity to ask the questions that they would like to ask.

Our witnesses are started by Mr. Donald Neufeld. Mr. Neufeld serves as associate director of Service Center Operations at the U.S. Citizenship and Immigration Services. He oversees all planning, management and execution of functions of Service Center Operations. He began his career with the Immigration and Naturalization Service in 1983 and joined the management team in 1991. In this capacity Mr. Neufeld has held various management positions.

Mr. Bo Cooper serves as partner in Berry Appleman & Leiden in Washington D.C. He provides strategic business immigration advice to companies, hospitals, research institutions, schools and universities. Mr. Cooper served as general counsel of the Immigration and Naturalization Service from 1999 until February, 2003 when he became responsible for the transition of Immigration Services to the Department of Homeland Security. Mr. Cooper earned JD at Tulane University Law School and holds a bachelor of arts from Tulane University.

Dr. Ron Hira is associate professor of public policy at Rochester Institute of Technology where he specializes in policy issues on offshoring, high-skilled immigration, technological innovation and the American engineering workforce. Ron is also a research asso-

ciate with the Economic Policy Institute. Dr. Hira holds a Ph.D. in public policy from George Mason University, an MS in electrical engineering from GMU and a BS in electrical engineering from the Carnegie Mellon University.

And our fourth witness is Mr. Bruce Morrison. Well, I don't know if I am promoting you or demoting you, you know. Bruce serves as chairman of the Morrison Public Affairs Group. He is a former Member of the House here and I had the honor of serving with him for several years, from 1983 to 1991. During this time he was a Member of the Judiciary Committee and served as Chairman of this Subcommittee. Additionally, he served, from 1992 to 1997, on the U.S. Commission on Immigration Reform. Mr. Morrison holds a bachelors degree in chemistry from MIT, a masters degree in organic chemistry from the University of Illinois and earned his JD from Yale Law School.

Welcome to all of you. And we will start now with Mr. Donald Neufeld.

Mr. Neufeld?

TESTIMONY OF DONALD NEUFELD, ASSOCIATE DIRECTOR OF SERVICE CENTER OPERATIONS, U.S. CITIZENSHIP AND IMMIGRATION SERVICES

Mr. NEUFELD. Chairman Gallegly, Ranking Member Lofgren and Chairman Smith and Ranking Member Conyers—is that better? Great.

I'm Donald Neufeld, the associate director of the Service Center Operations Directorate of U.S. Citizenship and Immigration Services. I appreciate the opportunity to appear today to discuss the H-1B program and our efforts to combat fraud and misuse of this visa classification.

USCIS is responsible for evaluating an alien's qualifications for the H-1B classification and for adjudicating petitions for a change to H-1B status for aliens who are already in the United States. The majority of H-1B petitions are for specialty occupations which require both the alien and the position to meet specific criteria related to education and licensing.

USCIS approval of an H-1B petition does not guarantee issuance of a visa or admission to the United States. For an alien seeking H-1B status outside the United States the Department of State will determine whether he or she is eligible for a visa. Finally, U.S. Customs and Border Protection is ultimately responsible for making admissibility determinations at a port of entry.

In general, the number of aliens issued H-1B visas or otherwise accorded H-1B status may not exceed the statutory cap of 65,000 per fiscal year.

In administering the H-1B program USCIS is mindful of fraud concerns and has implemented a robust anti-fraud program. In May, 2004 USCIS created the Office of Fraud Detection and National Security, FDNS, as the organization responsible for fraud detection and prevention. In 2010 FDNS was elevated to a directorate raising the profile of this work within USCIS and increasing the integration of the FDNS mission into all facets of the agency's work.

In February, 2005 FDNS developed and implemented what is now known as the Benefit Fraud and Compliance Assessment in an effort to quantify the nature and extent of fraud in selected benefits programs. USCIS conducted a study of the H-1B program involving a review of 246 randomly selected petitions filed between October 1st, 2005 and March 31st, 2006. After reviewing the findings of this report, USCIS issued guidance to adjudicators, in October, 2008 that provided them with fraud indicators, instructions on the issuance of requests for evidence and other notices and instructions on the referral of petitions to FDNS when further investigation is warranted. On January 8th, 2010 USCIS issued a memorandum to provide further clarification to adjudicators what constitutes a valid employer/employee relationship in the H-1B context. In March, 2010 USCIS headquarters personnel provided training to adjudicators on the updated guidance.

This guidance and training provides USCIS officers with tools that help define and identify eligibility requirements and provides clear instructions on how to handle petitions when fraud is suspected. USCIS has also developed other tools for verification. In July, 2009 USCIS implemented an administrative site visit and verification program. Currently FDNS conducts unannounced post-adjudication site visits to verify information contained in randomly selected H-1B visa petitions. In fiscal year 2010 USCIS conducted 14,433 H-1B site inspections.

USCIS continues to analyze results from these site inspections and to resolve those cases that have not been reaffirmed or revoked.

Finally, this year USCIS provided adjudicators with a new tool for adjudicating H-1B and other employment-based petitions. The Validation Instrument for Business Enterprises, otherwise known as VIBE, uses commercially available data to validate basic information about companies, organizations petitioning to employ alien workers. USCIS adjudicators review all information received through VIBE, along with the evidence submitted by the petitioner in order to verify the petitioner's qualifications. VIBE creates a standardized means of validating whether a petitioning company or organization is legitimate and financially viable.

In conclusion, USCIS has taken a number of steps to guarantee the integrity of the H-1B program while ensuring U.S. employers have access to specialized, temporary workforce needed to compete in the global market.

On behalf of USCIS Director Alejandro Mayorkas and all of our colleagues at USCIS, thank you for your continued support of the H-1B program and for giving us the tools to combat H-1B fraud.

Mr. Chairman and Members of the Committee, thank you again for the opportunity to provide information on the status of our program and I looked forward to answering your questions.

[The prepared statement of Mr. Neufeld follows:]

U.S. Citizenship and Immigration Services

WRITTEN TESTIMONY

OF

DONALD NEUFELD
ASSOCIATE DIRECTOR
SERVICE CENTER OPERATIONS DIRECTORATE
U.S. CITIZENSHIP AND IMMIGRATION SERVICES

FOR A HEARING ON

"H-1B Visas: Designing a Program to Meet the Needs of the U.S. Economy and U.S. Workers"

BEFORE
THE HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT

March 31, 2011
10:00 a.m.
2141 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC

INTRODUCTION

Chairman Gallegly, Ranking Member Lofgren, and Members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss the H-1B program and U.S. Citizenship and Immigration Services' (USCIS) efforts to combat fraud and misuse of this nonimmigrant visa classification. I am Donald Neufeld, the Associate Director for the Service Center Operations Directorate (SCOPS) of USCIS. In this position, I am responsible for overseeing the adjudication of petitions for the H-1B nonimmigrant classification. I welcome this opportunity to explain how the H-1B program works and USCIS' efforts to combat fraud while ensuring that U.S. companies are able to obtain the highly skilled temporary workers needed to conduct business and strengthen our economy. I will begin with a summary of the procedural steps for seeking the H-1B visa, the necessary qualifications to obtain the visa, and the role of USCIS and the Departments of Labor and State in the process.

The H-1B nonimmigrant classification is a vehicle through which a qualified alien may seek admission to the United States on a temporary basis to work in his or her field of expertise. An H-1B petition can be filed for an alien to perform services in a specialty occupation, services of an exceptional nature requiring exceptional merit and ability relating to a Department of Defense (DOD) cooperative research and development project or coproduction project, or services as a fashion model of distinguished merit and ability. To begin the process of employing an H-1B temporary worker, the U.S. employer must first receive certification from the Department of Labor (DOL) that it filed a Labor Condition Application (LCA). The LCA specifies the job, salary, length, and geographic location of employment. In addition, the employer must agree to pay the alien at least the actual or prevailing wage for the position, whichever is greater. Following receipt of the certification, the employer must then file an H-1B petition with USCIS.[1]

The H-1B petition may be used to sponsor an alien for an initial period of H-1B employment or to extend or change the authorized stay of an alien previously admitted to the United States in H-1B status or another nonimmigrant status. Additionally, an employer may file the petition to sponsor an alien who currently has H-1B nonimmigrant status working for another employer or amend a previously approved petition.

REQUIREMENTS TO QUALIFY FOR H-1B CLASSIFICATION

USCIS is responsible for evaluating an alien's qualifications for the H-1B classification, and for adjudicating petitions for a change to H-1B status for aliens who are already in the United States in another nonimmigrant classification by assessing whether the alien will be performing services in a field of expertise determined to be a specialty

[1] An LCA is not required for petitions involving DOD cooperative research and development projects or coproduction projects. See 8 CFR 214.2(h)(4)(vi)(A)(2).

occupation, services relating to a DOD cooperative research and development project or coproduction project, or services of distinguished merit and ability in the field of fashion modeling. As a majority of H-1B petitions are for specialty occupations, this testimony will primarily focus on those. In order to perform services in a specialty occupation, an alien must meet one of four enumerated criteria related to his or her specific education or licensing level attained.[2] To qualify as a specialty occupation, the position must also meet one of four specific requirements concerning the licensing or educational degree required by the occupation.[3]

ADJUDICATION OF H-1B PETITIONS

H-1B petitions are submitted on behalf of alien workers by their prospective employers on USCIS Form I-129, Petition for a Nonimmigrant Worker, the H Classification Supplement to Form I-129, and the H-1B Data Collection and Filing Fee Exemption Supplement. The petitions are mailed to one of two USCIS Service Centers for processing depending on the location of the beneficiary's worksite and whether the petition is exempt from the statutory numerical cap.

Upon receipt of a properly filed petition,[4] USCIS stamps each petition with the date of arrival at the service center. A clerk creates a paper file that contains the original petition and all supporting documentation. This file becomes the official file of record for all activities connected with the petition.

After being sorted into potential cap and non-cap cases, the file is assigned to an adjudicator who determines whether there is adequate information in the file to approve or deny the petition. If sufficient evidence is available, the adjudicator makes a decision and enters the corresponding information into the tracking system. In the case of insufficient evidence, the adjudicator may request additional information from the petitioner. If the employer does not respond to the request within a set period, the petition will be denied. Our adjudicators are trained to review each petition and supporting documentation in its entirety. They are instructed to refer petitions to the

---

[2] The criteria are: (1) hold a U.S. bachelor or higher degree, as required by the specialty occupation, from an accredited college or university; (2) possess a foreign degree determined to be equivalent to a U.S. bachelor or higher degree, as required by the specialty occupation, from an accredited college or university; (3) have any required license or other official permission to practice the occupation (for example, architect, surveyor, physical therapist) in the state in which employment is sought; or (4) have, as determined by USCIS, the equivalent of a U.S. bachelor's degree required by the specialty occupation acquired through a combination of education, specialized training, and/or progressively responsible experience related to the specialty. See 8 CFR 214.2(h)(4)(iii)(A). Specialty occupations include, but are not limited to, computer systems analysts and programmers, physicians, professors, engineers, and accountants.

[3] The requirements are: (1) a bachelor's or higher degree or its equivalent is normally the minimum entry requirement for the position; (2) the degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, the position is so complex or unique that it can be performed only by an individual with a degree; (3) the employer normally requires a degree or its equivalent for the position; or (4) the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with attainment of a bachelor's or higher degree. See INA 214(g)(4).

[4] Petitions that are improperly filed (e.g., submitted without the proper signatures or required fees) are rejected by the service center. Rejected petitions are returned to the petitioner with any submitted fees and will not retain a filing date. 8 CFR 103.2(a)(7).

Center's Fraud Detection Office when there is a suspicion of fraud based on established guidelines.

After adjudication, petitions and supporting documentation are forwarded to either the USCIS records center for storage or the Kentucky Consular Center for consular processing. The USCIS approval of an H-1B petition does not, however, guarantee issuance of an H-1B visa or admission to the United States in H-1B status.

If an alien seeking H-1B status is outside of the United States, the responsibility for visa adjudication rests with the U.S. Department of State (DOS). Once the H-1B petition has been approved by USCIS, DOS, at a U.S. embassy or consulate abroad, will determine whether a prospective alien employee is eligible for a visa. Finally, U.S. Customs and Border Protection (CBP) is ultimately responsible for making admissibility determinations for aliens seeking to enter the United States in H-1B – or any other – status at a port of entry.

The alien may be admitted to the United States in H-1B status for a maximum period of six years;[5] however, each H-1B petition may only be approved for a maximum period of three years.[6] At the end of the six-year period, the alien generally must either change to a different status (if eligible) or depart the United States.[7] USCIS regulations provide that an alien who has been outside the United States for at least one year may be eligible for a new six-year period of admission in H-1B status.[8] There is an exception to this general rule in that an alien involved in DOD cooperative research and development projects or coproduction projects may be admitted to the United States in H-1B status for a maximum period of ten years;[9] however, such H-1B petitions may only be approved for a maximum period of five years.[10]

In general, the number of aliens issued H-1B visas or otherwise accorded H-1B status may not exceed 65,000 per fiscal year. Congress established the annual H-1B "cap" when it created the H-1B category in 1990. USCIS approved 64,600 petitions subject to the Fiscal Year 2010 cap and 20,000 petitions under the advanced degree exemption for that fiscal year. During Fiscal Year 2010, USCIS approved 192,990 H-1B petitions submitted by employers on behalf of alien workers. The number of approved petitions exceeds the number of individual H-1B workers sponsored because more than one U.S. employer may file a petition on behalf of an individual H-1B worker.[11]

---

[5] See INA 214(g)(4).
[6] See 8 CFR 214.2(h)(9)(iii)(A)(1).
[7] Certain aliens are not subject to the six-year maximum period of admission under the provisions of the American Competitiveness in the Twenty-first Century Act of 2000 (AC21), Pub. L. No. 106-313.
[8] 8 CFR 214.2(h)(13)(iii)(A).
[9] 8 CFR 214.2(h)(13)(iii)(B).
[10] 8 CFR 214.2(h)(9)(iii)(A)(2).
[11] Of this number, a total of 76,627 petitions (includes petitions subject to the cap, as well as petitions not subject to the cap) were for initial employment. The corresponding number of petitions for continuing employment was 116,363. Furthermore, of the petitions approved in Fiscal Year 2010, approximately 171,754 were both filed and approved during Fiscal Year 2010. The remaining 21,236 were filed prior to Fiscal Year 2010.

H-1B BENEFIT FRAUD COMPLIANCE AND ASSESSMENT (BFCA)

The Government Accountability Office (GAO) Report 02-66 of January 2002, entitled *Immigration Benefit Fraud: Focused Approach Is Needed to Address Problems*, found that the U.S. legal immigration system was being abused and potentially used to threaten national security and public safety and contribute to other illegal activities, such as human and narcotics trafficking. The report recommended that the legacy Immigration and Naturalization Service implement a sound anti-fraud benefit strategy, designate the detection of immigration benefit fraud as a priority initiative, and create a mechanism to collect and report data to identify the volume and scope of fraud that exists. As I will outline today, USCIS has addressed these concerns with a robust anti-fraud program.

In May 2004, USCIS created the Office of Fraud Detection and National Security (FDNS) as the organization responsible for fraud detection and prevention. In 2010, FDNS (which was created as an office within a Directorate) was elevated to a Directorate, raising the profile of this work within USCIS, bringing about operational improvements, and increasing the integration of the FDNS mission into all facets of the agency's work. Today, FDNS remains a vital part of the USCIS effort to ensure the integrity of the nation's immigration benefits processes.

In February 2005, FDNS developed and implemented the Benefit Fraud Assessment (BFA) program as the initial effort to quantify the nature and extent of fraud in selected benefit programs. The initial focus of the BFA program was on those areas where the highest volumes of immigration benefit fraud was thought to exist. In 2009, the BFA program was renamed the Benefit Fraud and Compliance Assessment (BFCA) program to account for technical and other noncompliance issues that did not clearly appear to be fraud-based, but represented potential abuses of the system. USCIS is currently evaluating its BFCA processes and resources to strengthen the underlying methodologies and corresponding operational value.

USCIS conducted a study of the H-1B nonimmigrant worker program involving a review of 246 randomly selected I-129 petitions filed between October 1, 2005, and March 31, 2006. Relying on systematic file reviews, site visits, interviews, overseas document verification requests, and systems checks, the BFCA sought to verify information that was critical to establishing eligibility for the benefit sought. Results of these reviews were then studied to identify the types of fraud and abuse uncovered and then isolate indicators that could be provided to officers who adjudicate H-1B petitions.

Released in September 2008, the H-1B report (or BFCA), revealed a 13.4 percent fraud rate and a 7.3 percent technical violation rate— a total violation rate of 20.7 percent. Violations ranged from document fraud to deliberate misstatements regarding job locations, wages paid, and duties performed. USCIS also discovered that some petitioners shifted the burden of paying American Competitiveness and Workforce Improvement Act fees to beneficiaries in contravention of the intent of the H-1B Visa Reform Act of 2004.

Analysis of the data collected during the BFCA yielded fraud indicators. These indicators are generally used to identify potential fraud risks in applications or petitions.

Relying on these indicators, we now have guidance and processes to ensure that officers recognize the relative risk and that they will take appropriate actions when a particular indicator—or combination of indicators—suggests further inquiry is warranted.

USCIS ACTIONS IN RESPONSE TO THE BFCA

Field Guidance

After determining the fraud and violation rates, isolating fraud indicators, and determining which combinations of indicators represented a level of risk that required FDNS attention, USCIS issued internal guidance to adjudicators in October 2008. This guidance provided the fraud indicators, instructions on the issuance of Requests for Evidence, Notices of Intent to Deny, or Notices of Intent to Revoke when potential violations or non-compliance with the H-1B program were identified, and instructions on the referral of petitions to FDNS when further administrative investigation activities—including site inspections—were warranted.

On January 8, 2010, USCIS issued a memorandum to the Service Center Directors titled "Determining Employer-Employee Relationship for Adjudication of H-1B Petitions, Including Third-Party Site Placements." While this memorandum did not change any of the statutory or regulatory requirements for an H-1B petition, it provided clarification to adjudicators on what constitutes a valid employer-employee relationship for the H-1B specialty occupation classification. It also clarified such relationships particularly as they pertain to independent contractors, self-employed beneficiaries, and beneficiaries placed at third-party worksites.

In addition, the memorandum discussed the types of evidence petitioners may provide to establish that a valid employer-employee relationship exists and will continue to exist throughout the duration of the requested H-1B validity period. H-1B regulations require that a U.S. employer establish that it has an employer-employee relationship with respect to the beneficiary, as indicated by the fact that it may hire, pay, fire, supervise or otherwise control the work of any such employee.[12] Adjudicators evaluate whether the petitioner has the "right to control" the beneficiary's employment, such as when, where, and how the beneficiary performs the job. No one factor is decisive, and adjudicators review the totality of the circumstances when making a determination as to whether the employer-employee relationship exists.

USCIS held several stakeholder engagements following implementation of this memorandum. On February 18, 2010, USCIS hosted a collaboration session to discuss implementation of the memo. USCIS also hosted a listening session on March 26, 2010, to provide medical professionals and legal practitioners who represent medical professionals with an opportunity to discuss perceived impacts of the memorandum on the healthcare industry.

In March 2010, USCIS headquarters personnel provided training to the Vermont Service Center and the California Service Center on the updated guidance. Furthermore, in February 2010 my Directorate instituted 100 percent supervisory review of all Requests

[12] See 8 CFR 214.2(h)(4)(ii).

for Evidence (RFEs) and Notices of Intent to Deny (NOIDs) based on the contents of the memorandum and, in March 2010, 100 percent SCOPS headquarters review of all RFEs, NOIDs, and denials on healthcare staffing petitions and petitions where the alien is the sole proprietor of the business, in response to concerns voiced during the stakeholder engagements. SCOPS ended these 100 percent reviews in August 2010 after determining that adjudicators were properly applying the guidance contained in the memorandum.

Combined, these guidance documents provide USCIS officers with tools that are helpful in defining and identifying eligibility requirements, as well as in detecting and investigating H-1B fraud and providing clear instructions on how to handle petitions when fraud is suspected.

Administrative Site Visit and Verification Program (ASVVP)

During the course of the BFCA, and consistent with an earlier assessment of the religious worker program, USCIS recognized the value of site visits as a verification tool. Building on this, in July 2009 USCIS implemented an Administrative Site Visit and Verification Program (ASVVP). Currently, FDNS conducts unannounced post-adjudication site visits to verify information contained in randomly-selected H-1B visa petitions. Using BFCA findings and indicators as a guide, USCIS developed a standard series of questions that inspectors ask when conducting a site visit. Possible actions taken when inspectors are unable to verify or validate information provided include further review by an adjudicator and potential issuance of a Notice of Intent to Revoke, or referral to an FDNS field office for further investigation. USCIS does not deny or revoke a petition solely based on information obtained during an ASVVP site visit without first providing petitioners and their representatives of record an opportunity to review and address the information.

In Fiscal Year 2010, USCIS conducted 14,433 H-1B ASVVP site inspections. Of those petitions subject to an ASVVP inspection, 14 percent were "not verified," resulting in referrals to adjudicators or FDNS for further inquiries. Of those petitions that were "not verified," 11 percent were reviewed by adjudicators and reaffirmed with an approval, and 46 percent were referred to FDNS for further fraud inquiries or revoked by adjudicators. The remaining "not verified" cases are still pending review by adjudicators or FDNS. As compared to the nearly 21 percent fraud and noncompliance rate in 2008, the 14 percent "not verified" rate suggests a reduced level of fraud in the H-1B program. As it continues to analyze ASVVP results and resolve those cases that have not been reaffirmed or revoked, USCIS expects to determine a current fraud rate in the program.

VALIDATION INSTRUMENT FOR BUSINESS ENTERPRISES (VIBE)

Background of VIBE

In the spring of 2008, SCOPS formulated a concept initiative, "Validation Instrument for Business Enterprises" (VIBE). VIBE is an adjudication tool for most employment-based nonimmigrant and immigrant classifications, including the H-1B classification. It uses commercially available data from an independent information provider to validate basic information about companies or organizations petitioning to employ alien workers.

USCIS adjudicators review all information received through VIBE along with the evidence submitted by the petitioner in order to verify the petitioner's qualifications. VIBE creates a standardized means of validating whether a petitioning company or organization is legitimate and financially viable.

SCOPS formed a beta-testing group comprised of adjudicators from all four service centers in June 2010 to begin testing VIBE with actual petitions. Beta-testing of VIBE was expanded to all adjudicators working the affected employment-based petitions in January and February 2011. SCOPS headquarters personnel traveled to each service center to assist with this training. Each of the service centers then held further training and roundtables in the following weeks. I am proud to announce that beta-testing has nearly concluded.

CONCLUSION

USCIS has taken a number of steps to guarantee the integrity of the H-1B program while ensuring U.S. employers have access to the specialized temporary workforce needed to compete in the global market.

On behalf of USCIS Director Alejandro Mayorkas and all of our colleagues at USCIS, thank you for your continued support of the H-1B program and for giving us the tools to combat H-1B fraud. Instrumental to the expansion of our anti-fraud efforts, particularly as they relate to H and L nonimmigrant visa fraud, has been the availability of funds allocated to DHS resulting from the Fraud Detection and Prevention Fee. For USCIS, these funds have enhanced fraud detection capabilities by facilitating the hiring and deployment of 93 FDNS Immigration Officers and Supervisory Immigration Officers to USCIS Headquarters and to the field to focus on immigration benefit fraud.

Mr. Chairman and Members of the Committee, thank you again for the opportunity to provide information on the status of our program. I look forward to answering your questions.

Mr. GALLEGLY. Thank you very much, Mr. Neufeld.

Mr. COOPER? MR. Cooper, could you pull that in a little closer. I'm having a little harder time hearing Mr. Neufeld. Okay, that's fine. Thank you.

TESTIMONY OF BO COOPER, PARTNER, BERRY, APPLEMAN & LEIDEN, LLP

Mr. COOPER. On? So sorry.

Mr. Chairman, Ranking Member Lofgren, Ranking Member Conyers and distinguished Members of the Subcommittee, I am grateful to you for the opportunity to join you today.

I think it is dead on for this debate over the role of high-skills immigration in our country's economy to focus on jobs. Where Congress comes out on this issue will have a great deal to do with who we are as a country, in the decades to come, and with whether America will continue to lead the world in innovation and growth.

This debate has been clouded over the last years by a fundamental misconception that the job supply in the U.S. is a zero sum game and that a job occupied by a foreign professional is a job lost to a U.S. worker. This is a misconception that has got to be shed.

Our country has always operated on the principle that the more brain power we can attract from around the world, and the more creativity, invention and growth we can achieve here at home. Fortunately there appears to be a re-emerging consensus to stick to this principle. The comments that many of you made in your opening statements are in harmony with the comments of the President in his State of the Union address this year and comments from Majority Leader Cantor, just last week, noting the importance of attracting bright professionals into our economy and decrying an immigration policy that would lose them to foreign competitors.

The H-1B is an indispensible part of the high-skilled immigration ecosystem. It is often the only way to get a highly skilled foreign professional on the job quickly when the economy needs them. It is often the only way to bring in person with pinpointed skills to provide a crucial temporary service. And it is overwhelmingly the only way to bring a bright foreign talent into a permanent role as a contributor to the U.S. economy.

Our approach to the H-1B program should be governed fundamentally by the physician's oath, "First, do no harm." Those of us who practice immigration law see in our offices every day the power of the H-1B program to fuel the U.S. economy. Let me offer just one small example. Sonu Aggarwal is the CEO of Unify Square, a company in Redmond, Washington. He came here as a student at Dartmouth and MIT and entered the workforce with an H-1B. He's the author of the original patent on enterprise—an author of the original patent on enterprise instant messaging technology, the seed of his current company. His product is used, for example, by healthcare providers to monitor patients' conditions in real time through their cell phones.

Now a U.S. citizen he runs a company with 34 employees around the world, 24 of which are in the United States. Of these 24, 22 are U.S. workers. H-1B's are used in obviously sparing numbers, when they are needed to fill an extremely hard to find skill set. They have got a monthly growth today of 10 percent per month.

One H-1B, 22 jobs for U.S. workers and counting, that is the main story of what the H-1B program does for the U.S. economy.

H-1B employers also pour massive sums of money into programs to train U.S. workers and educate U.S. students and to fund their own enforcement. Since FY 2000 employers have paid to the Federal Government over $3 billion in training and scholarship fees and anti-fraud fees. That is 58,000 college scholarships for U.S. students, through the National Science Foundation, and training for over 10—for over 100,000 U.S. workers.

The debate over the H-1B often focuses, as it ought to, on whether the program is simply a source of cheap labor to replace U.S. workers. And I think the starkest evidence against that is the pattern that Mr. Gallegly identified in his opening remarks. When the economy is strong demand is high, when the economy drops it plunges. If the H-1B were a source of cheap labor the exact opposite would happen. This is not a new point, but you can't have an honest discussion about the H-1B program without keeping that point front and center.

I certainly acknowledge that there is fraud and abuse within the H-1B program to some degree. I have spent many, many years in government, there is no such thing as a government benefits program that doesn't have people coming to hoodwink it at times. Yet, responsible employers would welcome improved enforcement and rather than an extravagant rewrite of the program in ways that might harm the program's ability to serve the U.S. economy and to create new U.S. jobs, the Government has already mapped out the key ways in which these abuses tend to take place.

As was noted in the USCIS fraud report that Mr. Neufeld talked about, they have identified the key patterns of misuse. It is employers who bring an H-1B here and fail to pay the required wage; an employer who cheats the system by calculating the required wage in an inexpensive market and then employing the person in a more expensive market where the wage would be higher; or shell employers that don't even exist. These are serious violations, but they are violations that can be enforced under today's rules. And before Congress embarks on a major revision of the program's contours that might have counterproductive effects on its job growth capabilities, it ought to use its oversight authority to examine whether the Government's enforcement resources are being used to maximum effect.

To conclude, it is clear that making the H-1B program the best it can be cannot, by itself, provide high-skilled immigration policy that will enable us to, in the President's words, "out innovate the rest of the world," employers of highly skilled professionals tend to want to bring, they typically want to bring their employees permanently into the U.S. economy. And observers across the board, I think, view that as a net positive for the United States and efforts to shorten that bridge or to eliminate it are critical parts of the reform puzzle. But, if we are to attract the bright minds from around the world that will help U.S. employers keep jobs in this country, grow more jobs for U.S. workers and remain the world's innovation leaders, a robust and effective H-1 program is essential.

Thanks very much.

[The prepared statement of Mr. Cooper follows:]

Statement of Bo Cooper

Partner, Berry Appleman & Leiden LLP

United States House of Representatives Committee on the Judiciary

Subcommittee on Immigration Policy and Enforcement

"H-1B Visas: Designing a Program to Meet the Needs of the U.S. Economy and U.S. Workers"

Washington, DC

March 31, 2011

Thank you, Chairman Gallegly, Ranking Member Lofgren, and distinguished members of the subcommittee. I am grateful for the opportunity to join you at this hearing. My name is Bo Cooper. I chair the Washington, D.C. office of Berry Appleman & Leiden, a national immigration law firm. I served in government as the General Counsel of the former Immigration and Naturalization Service from 1999 to 2003. I have also taught immigration at law schools in Michigan and here in Washington, and I work closely with Compete America, a coalition of corporations, universities, research institutions, and trade associations that advocates for reform of America's immigration policies surrounding high-skilled foreign professionals.

I have therefore had the opportunity to be involved in the H-1B and related issues we are discussing today from a full range of perspectives: as a practitioner in the midst of the flow of the program; as a government official charged with both enforcement and services responsibilities; as an academic; and as a policy advocate.

You have a difficult but urgent job. In the economic straits our country is facing, all policy debates must keep focused on jobs, and our country's high-skilled immigration policies must be a central part of that thinking.

A surprising level of rancor has surrounded the high-skilled immigration debate in recent years, especially with respect to the H-1B program. This level of rancor traces mainly to a fundamental misconception: that the job supply in the United States is a zero-sum game, and that a job occupied by a foreign professional is a job lost to a U.S. worker. This is a misconception that has got to be shed if we are to push forward a high-skilled immigration policy that equips the United States to remain the world's innovation leader, and to regain its maximum economic strength, and to restore job growth and prosperity for the U.S. worker. Throughout our history, our country has operated on the principle that the more brain power we can attract from around the world, the more creativity, invention, and growth we can achieve here at home.

Fortunately, as the anxiety from the worst stages of the recession begins to subside, there appears to be a reemerging consensus that we need to stick to this principle. The President began the year by emphasizing in the State of the Union address that the key to winning the future is "to out-innovate, out-educate, and out-build the rest of the world. We have to make America the best place on Earth to do business." The President emphasized the importance to our economy of students who "come here from abroad to study in our colleges and universities. But as soon as they obtain advanced degrees, we send them back home to compete against us. It makes no sense."

In a speech on strategies for economic growth just last week at Stanford University, Majority Leader Cantor sounded the same theme: "As a country we have always invited the best and brightest from around the world – many of whom are educated in our universities – to contribute to our economic growth. Yet our visa system has failed to keep pace with the demands of our economy. If bringing in high-skilled workers from abroad helps us keep thousands of jobs here in America, our antiquated laws should not be a barrier."

That leads directly to our topic today: the role of the H-1B program in attracting the world's best talent to this country, enabling our employers to use the talents alongside U.S. professionals to maximum effect, and enabling these professionals to drive economic growth in America.

To be sure, the H-1B program is only a part of a larger high-skilled immigration ecosystem. Student visa policies, intracompany transfer polices, and business visitor policies must also be smart and robust. And, of course, the system cannot work without smarter policies toward permanent residence. Without the ability to bring high-skilled foreign professionals permanently into the U.S. workforce, our employers face recruiting disadvantages and lose smart people who will join other economies to compete against us.

But the bottom line is that the H-1B program is an indispensible part of the high-skilled immigration ecosystem. Without a robust, fully functioning H-1B program, that ecosystem – and its role in our ability to out-innovate the rest of the world, to keep jobs here, and to grow new jobs in this country – will collapse. The H-1B is often the only way to get highly skilled foreign professionals on the job quickly, when the economy needs them. The H-1B is often the only way to bring in a person with pinpointed skills to perform a crucial temporary assignment. And it is overwhelmingly the only way to bring bright foreign talent across the bridge to permanent residence, and a permanent role as contributors to the U.S. economy.

The policy approach to the H-1B program should be governed fundamentally by the physician's oath: First do no harm. Those of us who practice immigration law see in our offices every day the ways in which the people in the H-1B program blossom in the American economy, both in temporary assignments and as they move permanently into the U.S. economy. Following are just a few examples of the power of the H-1B program to fuel the U.S. economy.

- Sonu Aggarwal is the CEO of Unify[2], a company in Redmond, Washington that helps global businesses transform the way they communicate by leveraging unified communications services and products: email, instant messaging, telephony, video access, and more. Mr. Aggarwal came to the United States as a student at Dartmouth and MIT, and then entered the workforce with an H-1B visa. He is an author of the original patent on enterprise instant messaging technology, the seed that grew into his current company. This unified communications application today enables health care providers to monitor patients in real time through the patients' cell phone. Its potential applications reach to, for example, enabling military patients in the Middle East to receive real-time diagnosis and treatment from a team of physicians around the world, with video and instant data access. Now a U.S. citizen, Mr. Aggarwal runs a company with 34 employees globally and 24 in the United States. Of these 24, 22 are U.S. workers. H-1Bs are used in obviously sparing numbers, when needed for candidates with extremely hard-to-find skill sets that are necessary to give this U.S. job-generating company a global competitive advantage. Moreover, the U.S. job growth stands only to continue. Unify[2] has doubled in size in the last half-year, and today has a monthly growth rate of 10 percent. The H-1B visa program was an indispensible part of this process for Mr. Aggarwal, and continues to be an essential, though numerically modest, part of the company's U.S. job growth.

- Dr. Bohdan Pohamac, a physician on an H-1B at Brigham & Women's Hospital in Boston, led the 30-person team that last week performed the nation's first full face transplant, changing life for a Texas construction worker who was badly disfigured in a power line accident.
- Oncologist Hiroto Inaba, an H-1B at St. Jude Children's Research Hospital in Memphis, is the lead author of a study that identified childhood cancer survivors who are at increased risk for lung problems. The study is the most comprehensive look yet at the long-term lung function of childhood leukemia survivors whose treatment included bone marrow transplantation. The results may help physicians identify leukemia patients at increased risk for post-transplant lung problems and adjust treatment to avoid those problems.

Clearly, these are the kinds of technological, intellectual, and economic contributions that our high-skilled immigration system, and the H-1B program as an essential part of it, must facilitate. And this handful of examples sits alongside the continuing pattern at companies like Microsoft, Google, Oracle, Intel, Caterpillar, and scores of others, all using H-1Bs in modest numbers. These companies have each directly created tens of thousands of jobs for U.S. workers, and indirectly created exponentially more in the downstream economy. This is the main story of what the H-1B program does for the U.S. economy.

In addition to the contributions of H-1B workers to the U.S. economy, the H-1B program itself is designed simultaneously to help develop the domestic workforce. H-1B employers have poured massive sums of money into programs to train U.S. workers and educate U.S. students. Moreover, H-1B employers fund their own program's enforcement. Each time an employer files a petition for a new H-1B worker, and then again when the employer first seeks to extend that H-1B worker's stay, that employer pays a $1500 training and education fee. Each time an employer files a petition for a new H-1B worker, that employer also pays a $500 anti-fraud fee. A recent report from the National Foundation for American Policy shows that, since FY 2000, employers have paid to the federal government over $3 billion in training/scholarship fees and anti-fraud fees, according to data obtained from U.S. Citizenship and Immigration Services. These fees have funded 58,000 college scholarships for U.S. students through the National Science Foundation and training for over 100,000 U.S. workers through the Department of Labor. This is in addition to corporate taxes and charitable donations to support education, as well as significant internal corporate resources for employee training and professional development.

Debate over the H-1B program often focuses, as it should, on whether the program serves, as its critics contend, simply as a source of cheap foreign labor that can be substituted for U.S. workers. Key facts too often are lost in that debate. First, it quite simply costs a lot to employ an H-1B worker. Government filing fees alone are $2320 for the initial petition, and $1820 for the first three-year extension. If the employer is sponsoring the employee for a green card and additional extensions are necessary, filing fees for each additional extension are $320. For an H-1B from India or China, the source of so many engineering graduates, two additional H-1B extensions could easily be necessary, so that the H-1B government filing fees through the process would total $4780. This is putting aside the legal fees, which would typically run in the neighborhood of $7000 through that process. It is also putting aside the legal and filing fees for the green card, which could easily range between $10,000 and $15,000, especially if the professional worker has a family. These substantial expenses help to augment one of the conclusions drawn in the NFAP study mentioned above: "The more than $3 billion employers

have paid in mandatory government fees to hire skilled foreign nationals since 2000 is a testament to one thing – if companies really are trying to save money by hiring H-1B visa holders, then they are not doing a very good job of it."

Perhaps the starkest evidence against the argument that the H-1B program is simply a source of cheap foreign labor lies in the picture of how the program has actually been used in different economic circumstances. This is not a new point, but no honest debate over the H-1B program can take place without this point remaining front and center. In 2008, when the economy was very strong and hiring was robust across the board, demand for H-1B workers was robust as well. On April 1 of that year, on the first day filing was permitted, six months before the beginning of the fiscal year when the visas could be used, tens of thousands more H-1B petitions were submitted than there were slots available. The following year, in 2009, America was in the throes of the recession. Employers could not hire, and in fact often had to trim their workforces, and they were seeking to tighten their belts in every way. In these circumstances, if the H-1B program were truly a source of cheaper labor, then there should have been a rush for H-1Bs. Yet the opposite happened. Demand plummeted that year, and H-1B visas remained available for nearly nine months. The same thing happened in 2010, as the effects of the recession continued. That year, H-1Bs remained available for even longer.

This is a recurring pattern. For Fiscal Year 2001, when the tech industry was at full throttle and demand for talent across the board, including foreign talent, was very high, Congress – as it should have – gave employers a horn of plenty for H-1B visas, tripling the cap temporarily to 195,000. Then the tech bubble burst, though, and the very same thing happened as during the recent recession: demand plummeted, and not even half the supply was used.

This pattern offers a simple, crystal-clear lesson. The H-1B program does not work as a source of cheaper foreign labor. It is an expensive, time-consuming program that employers turn to when they need to do so for expertise. Clearly there must be rules to protect the interests of U.S. workers, and there is a complex web of those rules in place. But in the end, the market has proven to be the most effective regulator of the program.

It is certainly the case that there is fraud and abuse within the H-1B program, as there is within any benefits program. I am confident that responsible employers across the board would welcome improved enforcement to better find and punish employers who violate the program's rules. Yet the H-1B debate on enforcement has evolved into the introduction of bills over the past few years with extravagant proposals to restructure the H-1B program in broad ways that would affect the full range of H-1B program users.

Meanwhile, the government has already put tremendous financial and analytical resources into H-1B fraud and misuse. The H-1B Fraud report that U.S. Citizenship and Immigration Services has addressed as part of this hearing identified the key ways in which some employers violate the rules, in ways that line up with much of what has been reported in the media. Violations tend to follow a known pattern. There are employers who bring in H-1B workers and do not pay the promised wage. Some employers calculate the required wage as if the worker would be working in an inexpensive market, and then send

the worker to a more expensive market where the prevailing wages would be higher. Some employers have H-1B workers perform roles that differ from what was in the petition, and that would not qualify for an H-1B. Some employers do not pay H-1B employees during periods where there is no work, in violation of what are called the "benching" rules. Some H-1B petitions were found to have been filed by "employers" that did not in fact exist. These are serious violations, but they are violations that can be – and that sometimes are, though not effectively enough – identified and punished now, with the rules that are already in place.

This is particularly true in view of the massive enforcement resources paid into the Treasury for this purpose by employers. Conspicuous by their absence today is the Department of Labor, which plays a major role in H-1B enforcement. Before Congress embarks on a major revision of the H-1B program in ways that could impede the ability of meticulous, responsible, job-creating employers to use the program, it should use its oversight authority to examine whether the government's enforcement resources are being used to maximum effectiveness. As part of that, it should ensure that enforcement resources are targeted as carefully as possible to what the government already knows about where program violations tend to be focused. For example, while the USCIS program to perform on-site inspections of H-1B employers certainly makes sense, and the employers I am familiar with are typically quite content to receive these inspections, we have often seen large employers with careful and sophisticated compliance programs and strong compliance records receive repeated audits. There is likely room to target these investigative efforts more strategically.

What is most critical is that, as Congress evaluates the H-1B program, it does so with clear eyes and without overreacting to exaggerated arguments against the program. Any alterations must be carefully targeted to carefully identified problems. In particular, Congress should not judge the program based on isolated examples of abuse. Certainly there are H-1B employers who break the rules and misuse the program, and those are the examples we hear in the media. But Congress needs to look at the program as a whole, recognizing that most employers comply fully, pay well in excess of the prevailing wage, and use H-1Bs as only a tiny percentage of their overall workforce.

As an example of the kinds of exaggerated descriptions that can be unhelpful to the debate, opponents of the H-1B program commonly describe the program in inflamed language like "indentured labor." A calmer look at the program as it actually works shows that the H-1B worker has remarkable freedom to change jobs. An H-1B worker can change employers as soon as a new employer is prepared to hire him or her. Under special "portability" rules that Congress enacted precisely to ensure freedom of movement, it is not even necessary to wait through USCIS processing periods. As soon as the new employer files a new H-1B petition, the employee can start the new job.

It is a simple matter of (1) the new employer providing notice to its workers, and to any bargaining unit, that it is going to file a petition for an H-1B worker, and then (2) making enforceable promises to the Labor Department that the employer will pay the prevailing wage and observe the other requirements for the protection of U.S. workers. Then the employer pays the new filing fee, the U.S. worker training and education fee, and anti-fraud fee, and the whole process can be accomplished in less than two weeks. This is hardly an "indentured labor" program, and the frequent use of labels like that should not

guide Congress toward program changes that are destructive rather than helpful to U.S. economic interests.

To be sure, this does not address the entire mobility problem. Even though H-1B employees can change employers freely, if they are in the green card backlog, then changing employers typically means stepping even farther back in the already extreme green card backlog. Nor does making the H-1B program the best it can be provide the full solution to finding a high-skilled immigration policy that will enable us to out-innovate the rest of the world. Employers of highly skilled professionals typically wish to bring their employees permanently into the U.S. economy, and observers across the board tend to view that as a net positive for the United States. Efforts to shorten that bridge to permanent residence, or to eliminate it for those in especially critical fields, are essential parts of the high-skilled immigration reform puzzle. But if we are to attract the bright minds from around the world that will help U.S. employers keep jobs in the United States, grow more jobs for U.S. workers, and remain the world's innovation leader, a robust and effective H-1B program is essential.

Mr. GALLEGLY. Thank you, Mr. Cooper.
Dr. Hira?

TESTIMONY OF RONIL HIRA, Ph.D., ASSOCIATE PROFESSOR OF PUBLIC POLICY, ROCHESTER INSTITUTE OF TECHNOLOGY

Mr. HIRA. Mr. Chairman, I should have learned the lesson, right? [Laughter.]

Thank you Chairman Gallegly, Ranking Member Lofgren, Chairman Smith and the Members of the Subcommittee for inviting me to testify here today.

I have been studying the H-1B program and its effects on the American engineering labor force for more than a decade now, so this is a great opportunity for me. I have concluded in that study that the H-1B program as it is currently designed and administered does more harm than good and to meet the needs of both the U.S. economy and American workers, the title of this particular hearing, the H-1B program needs immediate and substantial overhaul.

The goal of the program is to bring in foreign workers who complement the American workforce. Instead loopholes in the program have made it too easy to bring in cheaper foreign workers with ordinary skills who directly substitute for rather than complement American workers. So the program is clearly displacing American workers and denying opportunities to them.

The program has serious design flaws and legislation is needed to fix them. Administrative changes alone or stepped up enforcement, while necessary, are simply not sufficient to correct the problems.

First, the program allows employers to legally bring in foreign workers at below market wages. That is not a question of fraud, this is legal they are able to bring in workers at below market wages. How do we know this? There is lots of evidence, the most obvious one is that employers have said so. They told the GAO that they in fact bring in workers at below market wages.

Second, the program—pardon me, second the program allows employers to bypass qualified American workers and to even outright replace American workers with H-1B's. This is not a theoretical or hypothetical possibility, in fact there have been news reports about Americans training foreign replacements at companies like Wachovia, AC Nielsen and Pfizer.

Third, because the employer holds the visa, an H-1B worker's bargaining power is severely limited and they can easily be exploited by employers.

One of the consequences of the loopholes has been that in fact what the Government is doing with this policy is giving a competitive advantage to certain kinds of businesses, certain types of business models, and that is offshore, outsourcing firms. So in fact what the Government is doing with this—with the current policy is subsidizing the offshoring of American jobs.

For the past 5 years the top H-1B employers—most of the top H-1B employers are using the program to offshore tens of thousands of high wage, high-skilled American jobs. Using the H-1B to offshore is so common that in fact the former commerce minister of India dubbed the H-1B program the outsourcing visa.

Even more disturbing though than all of this, is the fact that the H-1B program has lost legitimacy amongst the American high tech workforce. And those are critical workers, not only because, as you

have all pointed out, science and technology and engineering is critical to not only the tech sector and national security but economic growth in general, but these are the incumbent workers who are the ambassadors for their profession. And what they are telling students is to shy away from these careers because they feel like the, you know, the cards are stacked against them.

In conclusion, let me say that I believe that the United States benefits enormously from high-skilled, permanent immigration. We can, and should encourage the best and brightest to come to the United States and settle here permanently, but the H-1B program is failing on both accounts. First it is clear that many H-1B workers are not the best and brightest. Instead, they possess ordinary skills and are filling jobs that could and should be filled by American workers.

And just to give you some examples, you mentioned earlier that the GAO found that 54 percent of H-1B applications were at the lowest wage level, that is the 17th percentile. So they aren't bringing in the best and brightest through this. And to give you another example, Infosys had a labor certification application for an—for 100 computer programmers, to bring in 100 H-1B computer programmers at $12.25 an hour. That is hardly the best and the brightest.

Another big misconception is, and this has been pointed out also today already, is that the H-1B is often equated with permanent residents. One of my recent studies found that in fact many of the largest H-1B employers sponsor very few of their H-1B's for permanent residents. And let me give you one example of this. Between 2007 and 2009 Accenture hired nearly 1,400 H-1B's, that is how may petitions they actually received. Yet during that same timeframe, during that same 3 years, they only sponsored 28 H-1B's for permanent residence. That is a 2-percent yield. I don't think anybody would argue that 2 percent is a very good success rate.

Our future will be enhanced by high-skill immigration, but its foundation critically depends on our homegrown talent. And I look forward to your questions during the discussion.

[The prepared statement of Mr. Hira follows:]

Testimony Given By

Ronil Hira, Ph.D., P.E.,
Associate Professor of Public Policy
Rochester Institute of Technology, Rochester, NY

In A Hearing Before The
Subcommittee on Immigration Policy and Enforcement
Committee on the Judiciary
U.S. House of Representatives

On
"H-1B Visas: Designing a Program to Meet the Needs of the U.S. Economy and U.S. Workers"

March 31, 2011

Rayburn House Office Building

I want to thank Chairman Smith, Chairman Gallegly, and the members of the subcommittee for inviting me to testify today. My name is Ronil Hira. I am a professor of public policy at the Rochester Institute of Technology in Rochester, New York. I have been studying the H-1B program and high-skill immigration since 2000. I appreciate the opportunity to share my thoughts about how the H-1B program is currently impacting the U.S. economy and American workers.[1]

I have concluded that the H-1B program, as currently designed and administered, does more harm than good. To meet the needs of the U.S. economy and U.S. workers, the H-1B visa program needs immediate and substantial overhaul.

The principal goal of the H-1B visa program is to bring in foreign workers who complement the U.S. workforce. Instead, loopholes in the program have made it too easy to bring in cheaper foreign workers, with ordinary skills, who directly substitute for, rather than complement, workers already in America. They are clearly displacing and denying opportunities to U.S. workers. A sizable share of highly skilled American workers and students - engineers, information technologists, and scientists - have concluded the H-1B program undercuts their wages and job opportunities. Those conclusions are largely correct and the program has lost legitimacy amongst much of America's high-tech workforce.

Furthermore, **program loopholes provide an unfair competitive advantage to companies specializing in offshore outsourcing, speeding up the process of shipping high-wage, high-tech jobs overseas. It has disadvantaged companies that primarily hire American workers** and forced those firms to accelerate their own offshoring, threatening America's future capacity to innovate and ability to create sufficient high-wage, high-technology jobs.

For at least the past five years nearly all of the employers receiving the most H-1B are using them to offshore tens of thousands of high-wage, high-skilled American jobs. Table 1 below shows that, for fiscal years 2007 to 2009, seven of the top ten H-1B employers are doing significant offshoring. Offshoring through the H-1B program is so common that it has been dubbed the "outsourcing visa" by India's former commerce minister.

The offshore outsourcing industry is adding hundreds of thousands of jobs every year. The top three India-based offshore outsourcing firms, Tata Consultancy Services, Infosys, and Wipro, added a stunning 57,000 net new employees last year alone. If the H-1B program loopholes were closed, many of those jobs would have gone to Americans.

In a recent interview with *ComputerWorld* magazine, former Representative Bruce Morrison, a past chairman of this subcommittee and co-author of the Immigration Act of 1990 that created

[1] This testimony is based on two papers I published with the Economic Policy Institute (EPI): "The H-1B and L-1 Visa Programs: Out of Control", published on October 14, 2010; and, "Bridge to Immigration or Cheap Temporary Labor? The H-1B & L-1 Visa Programs Are a Source of Both," published on February 17, 2010. Both papers can be found on the EPI website: www.epi.org.

the H-1B program, summed up his view about how the H-1B program has been distorted by outsourcing:

> "If I knew in 1990 what I know today about the use of it [H-1Bs] for outsourcing, I wouldn't have drafted it so that staffing companies of that sort could have used it," Morrison said. Jobs are going abroad because of globalization, he said, "but the government shouldn't have its thumb on the scale, making it easier."

Table 1

Top 10 H-1B Employers for Fiscal Years 2007-09
7 of 10 Have Significant Offshoring

H-1B Use Rank	Company	H-1Bs Obtained FY07-09	Significant Offshoring
1	Infosys	9,625	X
2	Wipro	7,216	X
3	Satyam	3,557	X
4	Microsoft	3,318	
5	Tata	2,368	X
6	Deloitte	1,896	
7	Cognizant	1,669	X
8	IBM	1,550	X
9	Intel	1,454	
10	Accenture	1,396	X

Source: DHS USCIS: Initial H-1B I-129 Petitions FY07-09

Below I summarize the problems with the H-1B program and how we can solve them.

FOUR DESIGN FLAWS WITH THE H-1B PROGRAM

H-1B visa use has become antithetical to policy makers' goals due to four fundamental flaws:

Flaw 1 -- No Labor Market Test

Contrary to popular perception in the media, and even amongst some policy makers, the H-1B visa program does not require any labor market test. In other words, employers are not required to show that qualified American workers are unavailable before hiring foreign workers through

the H-1B visa program. Employers can and do bypass American workers when recruiting for open positions and even replace outright existing American workers with H-1B guest workers.

Flaw 2—Wage requirements are too low

Wage requirements are too low for H-1B visas and as a result the program is extensively used for wage arbitrage. Employers have told the Government Accountability Office (GAO) that they hire H-1Bs because they can legally pay below-market wages. The primary wage requirement is the setting of a wage floor, the lowest level an employer can pay an H-1B. The current wage floor is approximately the 17th percentile. A recent GAO study found that the majority (54%) of H-1B labor condition applications were for that lowest level, a level reserved for "entry level" positions, hardly a wage level that the "best and brightest" would earn. Just to provide one example of how low that wage can be, the Department of Labor has certified wages as low as $12.25 per hour for H-1B computer professionals, an occupation where the typical median wage is more than $70,000.

Flaw 3 Work permits are held by the employer

Visas are held by the employer rather than the worker. An H-1B worker's legal status in the country is thus dependent on the employer, giving inordinate power to the employer over the worker. As a result, H-1B workers can be easily exploited and put into poor working conditions, but they have little recourse because the working relationship is akin to indentured servitude. A number of cases have been highlighted in the press recently.

Flaw 4—The visa period is far too long

H-1B visas are issued for three years and are renewable for another three years, which magnifies the damage done by low wages and the inability of workers to change jobs freely. The visas can be extended indefinitely beyond six years when employers apply for permanent residence for their H-1B workers, keeping the visa valid beyond a decade in some cases. Extending the H-1B visa length in lieu of fixing the underlying problems associated with permanent residence creates more problems than it solves.

Flawed administration

In addition to the inherent flaws in the design of the program, there is little oversight or enforcement of the program.

H-1B program oversight and enforcement is deficient. The Department of Labor review of H-1B applications has been called a “rubber stamp” by its own Inspector General. And a 2008 DHS IG report found that one-in-five H-1Bs were granted under false pretenses - either through outright fraud or serious technical violations. Critical data on actual program use is either not released or in some cases even collected. And program integrity largely relies on hope that H-1Bs would

blow the whistle if they were being exploited. Whistle-blowing is highly unlikely given that H-1Bs' legal status depends on their continued employment.

SOLVING THE PROBLEMS WITH THE H-1B PROGRAM

By closing the H-1B visa loopholes described above, Congress would create and retain tens of thousands of high-wage American jobs and ensure that our labor market works fairly for American and foreign workers alike.

Institute an Effective Labor Market Test

An effective labor market test, such as labor certification for each application, needs to be created. U.S. workers should not be displaced by guest workers, and employers should demonstrate they have looked for and could not find qualified U.S. workers.

As a fix, some have proposed extending H-1B Dependent firm rules to all firms. But these rules are clearly not effective since H-1B Dependent firms are able to avoid hiring Americans while garnering thousands of H-1Bs annually. Table 1 above shows four of the top five H-1B recipients are H-1B Dependent.

Pay Guest Workers True Market Wages

Guest workers should be paid true *market* wages. The Congressionally imposed four-level wage structure should be abandoned. No guest worker should be paid less than the median wage in the occupation for all skill levels. Ensuring that employers pay market wages will remove the temptation of wage arbitrage. Further, employers should pay an annual fee equal to 10% of the average annual wage in the occupation. Those fees could be used to increase the skills of the American workforce and will ensure that employers are hiring guest workers who are filling real gaps in the labor market.

Limit the visa to a maximum of three years, with no renewal.

This will ensure that employers either sponsor their H-1B workers for permanent residence or find a suitable American worker to fill the position.

Eliminate access to additional H-1B visas for any H-1B Dependent firms.

The program is intended to help employers in the United States operate more effectively, providing them skilled workers they cannot find in the U.S. It should not be a way for businesses to compete here in the U.S. with an imported workforce. With the exception of very small businesses, no employer should be permitted to employ a workforce consisting of more than 15% H-1Bs. There is no reason, other than wage arbitrage, for any firm to have more than 15% of its workforce on guest worker visas.

Shine Light on H-1B Program Practice

There is widespread and substantial misunderstanding, in the media and even amongst some policy makers, about how the program works in practice. Many of these misunderstandings could be cleared up through greater transparency. Congress and USCIS should publish data on program use by employer, including job title, job location, actual wages paid, and whether the worker is being sponsored for permanent residence. The data should include all H-1B workers, not just newly issued and renewed petitions.

Further, H-1B use by *H-1B Dependent* firms should be investigated and the findings publicly released. So called H-1B Dependent firms must meet additional requirements prior to hiring an H-1B worker, yet it is clear that these firms are able to circumvent Congress' intent regarding those additional requirements. As noted above these firms are able to hire literally thousands of H-1Bs annually without hiring any Americans for those positions.

Institute Sensible Oversight

Through their use of guest worker visas employers are asking government to intervene in the normal functioning of the American labor market. With this privilege should come accountability. Employers using guest workers should be subject to random audits to ensure they are fulfilling the obligations contained in their attestations. And Government agencies in charge of these programs— the Departments of Homeland Security, Labor, and State—should be granted the authority, and allocated resources, to ensure the programs are operating properly. Given the efforts in Congress to cut deeply into discretionary spending, some mechanism to fund these audits should be created. At a minimum, one in ten H-1B employers should be audited and, if they are not eliminated, every H-1B Dependent firm should be audited every year.

Establish a Clear Single Objective for the H-1B Program

The H-1B program is a so-called "dual-intent" visa; i.e., though the visas are temporary, employers can choose to sponsor these workers for permanent residence. While this design feature appears to provide flexibility, it comes at substantial cost. Is the H-1B program supposed to be truly temporary, be used sparingly, and only for short periods of time? Or is it the way to entice very recent foreign graduates of American universities to stay permanently? Or is it the primary bridge to immigration for high-skilled workers who are trained abroad? Each of these objectives creates inherent conflicts in program design; e.g., in setting wage floors. Congress should consider how to limit the scope of the H-1B program to improve its performance.

The H-1B is often equated with permanent residence in the media's discussion of high-skill immigration policy. As I have shown, with an analysis of the PERM database, many of the largest users of the H-1B program sponsor few, if any, of their H-1Bs for permanent residency. In the case of offshore outsourcing firm Tata Consultancy Services, it received 2,368 H-1Bs between 2007 and 2009, yet didn't sponsor a single H-1B for permanent residence. This example

illustrates how the program's reality doesn't match the claims made by employer coalitions such as Compete America.

Other High-Skill Visa Programs Need Scrutiny & Fixing

I understand that this hearing is specifically about the H-1B program but I would like to briefly highlight some other critical issues for high skill immigration policy that are directly related to the H-1B. Other temporary visa programs, such as the L-1 and B-1 and OPT, are also badly in need of an overhaul, and are being used to circumvent the annual numerical limit on H-1Bs. The L-1 visa program has even less control and oversight than the H-1B, has no annual "cap" and is very vulnerable to abuse. For example, the opportunities to exploit wage arbitrage using the L-1 is even greater than for the H-1B since the L-1 workers can be paid home country wages. The wage differentials between America and India, the source country for the largest share of L-1s, are staggering. With respect to the B-1 "business visitor" visa we have even less information about how it might be being exploited, but recent news reports and an ongoing lawsuit reveal that it is likely also being used to get around the H-1B rules and cap.

In 2008, the duration of the OPT work visa was extended for STEM to 29 months without oversight or any approval from Congress. It appears that the largest beneficiaries of this extension are obscure colleges that are providing workers to the offshore outsourcing industry. There is no wage floor for OPT and one analyst estimate they are paid a mere 40% of what Americans earn. The rationale for the OPT extension has disappeared so it should be rolled back to its original duration.

And certain categories of high skill employment based permanent resident visa programs with very long backlogs should be cleared. A clear pathway to permanent residence, which can be completed in a reasonable amount of time, should be created.

Immigration Policy Should Be Made By Congress, Not the U.S. Trade Representative

Given the widespread use of both H-1B and L-1 visas by offshore outsourcing firms, Congress should take affirmative steps to make it clear that both guest worker programs and permanent residence are immigration, and not trade, policy issues. In 2003, the U.S. Trade Representative (USTR) negotiated free trade agreements (FTAs) with Chile and Singapore, which included additional H-1B visas for those two countries, and constrained Congress from changing laws that govern the L-1 visa program. In response, many members of Congress felt it was important to re-assert that Congress, not the USTR, has jurisdiction over immigration laws. But no law was ever passed. Without legislation, the muddying of trade and immigration policy will keep recurring. Most recently, it appears that some L-1 visa provisions were included as a side agreement in the Korea-U.S. Free Trade Agreement. Many countries, including India, have pressed for more liberalized visa regimes through trade agreements including proposing a new GATS work visa. Congress, not the U.S. Trade Representative, should have the authority to change these laws, and Congress should pass a law reaffirming jurisdiction.

Immigration Policy Should Be Made By Congress But It Needs Specialized Expertise From An Independent Commission

A number of think tanks and academics, including the Migration Policy Institute and the Economic Policy Institute, have recommended that Congress create a standing commission on immigration. This commission would track the implementation of policy, the changing needs of the U.S. economy and labor market, and make recommendations to Congress on legislative changes. Given the nature of immigration policymaking Congress should seriously consider creating such a commission.

In conclusion, let me say that I believe the United States benefits enormously from high skilled permanent immigration, especially in the technology sectors. We can and should encourage the best and brightest to come to the United States and settle here permanently. But our future critically depends on our homegrown talent, and while we should welcome foreign workers, we must do it without undermining American workers and students. By closing the H-1B visa loopholes we would ensure that the technology sector remains an attractive labor market for Americans and continues to act as a magnet for the world's best and brightest.

The lobbyists supporting the H-1B program have repeatedly made claims that the program is needed because there is a shortage of American workers with the requisite skills, and the foreign workers being imported are the best and brightest. If that is indeed the case, then those employers should not object to these sensible reforms. The policies I have proposed pose no limitations on employers' ability to hire foreign workers who truly complement America's talent pool.

Mr. GALLEGLY. Thank you very much, Dr. Hira.

Bruce, welcome back to this chamber, I am sure you are familiar with it. And we welcome your testimony.

TESTIMONY OF BRUCE A. MORRISON, CHAIRMAN, MORRISON PUBLIC AFFAIRS GROUP

Mr. MORRISON. Thank you, Mr. Chairman and Ranking Member Lofgren, Ranking Full Committee Member Conyers and other Members of the Committee. It is a pleasure to be here and thank you for having me. I am appearing today on behalf of IEEE-USA which is an organization of over 210,000 engineers and technical—technically trained people who work in the computer industry and students who are training to fill those jobs in the future. And their role is critical in the future of out country.

I think that the one point of consensus that there ought to be on both sides of the aisle, and I think that there is at this table, is that the future of American jobs and American prosperity is what we should be focused on. And I would hope that the product of this hearing is to look at that question.

And I would say that the future to American jobs is to retain, in this country, those graduates who are foreign-born and in our universities who have these critical science and technology skills that our country needs in order to grow in the future. Doing that successfully will make a huge difference for American workers already here and Americans in the future. If we fail to do that we will pay the price in important ways and we should avoid that.

Now I think that the focus to do that needs to be on fixing the green card program. And why do I say that? I know a little bit of the history. The H-1B program was created in 1990, it is a successor to an earlier program, the H-1 program. And the changes that this Committee and the Congress made at that time really echoes a lot of the debate that is going on right now, trying to target the program better, narrow it, raise the skill levels that are required and encourage the use of green cards instead to bring highly skilled workers here on a permanent basis.

Well, 20 years have gone by, we really haven't quite got the job done, the debates are the same. We need to redouble our efforts. We need to focus our attention on these STEM students that we currently have and make sure that we compete them but that we compete for them in a way that does not disadvantage American workers and that we compete for them in a way that is effective in beating out our competitors in who we keep. And that is where green cards provide such an advantage.

The discussion about what to do in the regulatory realm to try to level the playing field for H-1 workers ought to teach everybody about the limits of regulation. I would think there ought to be a consensus on both sides of the aisle that the market is a better way to preserve good terms and conditions than endless regulations and the attempts to have Government enforce them. We are not enforcing the H-1B regulations now as a country, we never really have and despite the best efforts of USCIS and the Department of Labor, I doubt that we ever will. Yet, green card workers don't need all those protections because they have the power of the marketplace and employers don't have any special advantage over green card workers because they are just like American citizens, they can pick up and leave any time they want. And the way you keep them, as an employer, is not by coercion, but by good terms and conditions of employment. That is the way our labor market works. It is not

perfect but it sure is better than a regulatory regime. H-1B is a surrender to regulation when the market will solve the problem.

Green cards can be abused also. Green cards can be given to workers who don't need to be here, but let's focus on the people we know we want to keep, people who are getting advanced degrees today in STEM fields from American universities. They clearly are a valuable resource and they will go somewhere else if we don't keep them. Let's focus on them. Let's make sure that they are selected in a quality fashion and that when they are added to our workforce we will all be benefited because there will be greater productivity and greater jobs.

Green card workers can start their own businesses, H-1B workers can't. Green card workers are on a path to become American citizens, H-1B workers are not. Our competitors use guest worker permits to recruit against us. We have always done better because we ask people to become Americans, we don't ask them if we could please borrow their labor for a while and then we will see. That is a much more powerful recruiting tool, it has always worked for this country, it is why we are the great immigration country of the world. And for this critical competition, for the job creation we need today, with 9 percent unemployment, let's focus immediately not on what could divide people and the controversies over H-1B but what could unite us all. Let's get these new graduates who are going to be coming out on a green card path to become Americans and create American jobs.

[The prepared statement of Mr. Morrison follows:]

TESTIMONY OF BRUCE A. MORRISON

CHAIRMAN
MORRISON PUBLIC AFFAIRS GROUP

ON BEHALF OF

IEEE—USA

FOR THE HEARING

"H-1B VISAS: DESIGNING A PROGRAM TO MEET THE NEEDS OF THE U.S. ECONOMY AND U.S. WORKERS"

PRESENTED TO THE

COMMITTEE ON THE JUDICIARY
OF THE
UNITED STATES HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT

MARCH 31, 2011

TESTIMONY OF BRUCE A. MORRISON

Thank you, Chairman Gallegly, ranking minority member Lofgren, and distinguished members of the subcommittee for the opportunity to testify today. You have a vital job to do in these difficult economic times. We all want to help identify the opportunity for consensus on actions that the Congress can take to create jobs for Americans.

I am here today in my capacity as a representative of IEEE-USA, an organizational unit of the Institute of Electrical and Electronics Engineers, Inc. created in 1973 to support the career and public policy interests of IEEE's U.S. members. IEEE-USA represents over 210,000 engineering, computing and technology professionals and students. Its vision is to be the technical professional's best resource for achieving life long career vitality and to provide an effective voice on policies that promote U.S. prosperity.

The focus of this hearing is on the H-1B nonimmigrant category, so it may be helpful for me to provide a bit of historical perspective. I was the chairman of this subcommittee in 1990 when we defined the basic structure of the H-1B category in the Immigration Act of 1990, including the original 65,000 annual cap. Importantly, at the same time, we also increased the number of visas available for employment-based immigrants from 54,000 to the current 140,000, while shifting the focus of the immigrant visa categories toward higher-skilled immigrants. Our goal was to limit nonimmigrant admissions for filling "permanent" jobs in favor of the use of permanent immigrant visas—"green cards."

These changes were motivated by evidence that the pre-existing H-1 category was not sufficiently targeted on highly talented individuals, concern that the immigrant visa categories were too small and not targeted to high skills, and a belief that it is preferable to put those coming from abroad to fill permanent jobs on a path to become Americans. Regrettably, these objectives have not been adequately achieved over the past 20 years. Much of the debate over H-1B echoes what was said in the '80s and the visa categories for skilled employment-based immigrants are again backlogged.

It is clear from the debates over H-1B during the past 15 years that there will be continuing controversy over the "right" contours for that category. You are hearing different views on that controversy today. But while this debate continues, there is a more pressing problem that can and should be addressed: facilitating the employment of the many advanced degree graduates of STEM programs in America's top universities. While the percentages vary by school and program, it continues to be the case that a majority of these graduates are foreign born. This statistic should be a matter of concern, and an effective response to the underrepresentation of American students in STEM graduate programs is imperative. But this condition has existed for decades and any correction will take decades, as well. Meanwhile, we need these highly skilled graduates as part of our economy because their presence will expand jobs for Americans in two ways.

First, American technology firms need their skills for the research and product development that they are doing in the U.S. They need to draw from the full pool of U.S.-educated graduates, not

just the minority that are already Americans. If this talent pool is not available here, American firms will move jobs to where they can access the talent they need. When they do that, it is not just the foreign born who leave. Along with them go multiples of jobs now held by Americans. It is an outsourcing phenomenon that undercuts the U.S. job market for Americans in a range of professions.

Second, advanced degree STEM graduates are key contributors to innovation and increased productivity that will help grow whatever economy employs them. In America, they will enhance our productivity and prosperity, growing American jobs and the American standard of living. Or, they can take their skills—nurtured by our world leading universities—and put them to work building another country's prosperity. There are plenty of competitors in the world outside our borders ready to hire them.

In May and June, another class of advanced degree STEM graduates will join the workforce. Whose welcome mat will be most attractive? America has always won this competition in the past, but our competitors are increasingly aggressive in pursuit of this talent pool. And globalization has made it easier for multinational companies to go where the talent goes, rather than insist that the talent stay in America. With our unemployment so high, we desperately need to hold onto these jobs—those filled by Americans and those that can be filled by foreign-born graduates on their way to becoming Americans—as well as the jobs that their work will create.

"So, isn't that what the H-1B is designed to do?" No, not really. As a temporary, nonimmigrant category that ties employees to particular employers, it is not America's most effective welcome mat. What makes America unique in the world is its process of turning newcomers into Americans. These STEM graduates, like generations before them, do not want to be "temporary workers" valued only as long as they are of interest to a "temporary employer." Rather, they are skilled individuals, often with families, who seek a secure place in a competitive workplace and a welcoming community. They want to stay permanently in America and become Americans. And this "Ellis Island" model of immigration is what sets us apart in the global competition for talent.

The IEEE-USA represents electrical, electronics and computer engineers. While 80% are native born, 20% are immigrants. Student chapters abound, with their mixture of "grown-up here" and "came from abroad" students. But there is a consensus among the membership. These members do not want to be part of a system that uses "temporary visas" to advantage or disadvantage some employees over others. They want a workplace where the competition is fair because the playing field is level. With "green cards" you do not have to write endless rules regarding portability and prevailing wages. The job market sorts all this out. Employers keep their workers by providing an attractive employment opportunity. Employees keep their working conditions up by having options. That is the better way to attract and keep foreign-born talent without adversely affecting American workers or exploiting the foreign born.

In short, there are no problems for which green cards are not a better solution than temporary visas. And there are no problems with the H-1B program itself that a system built on green cards will not help to fix. So we are asking this Subcommittee to change the subject—from H-1B to green cards—at least long enough to address the opportunity to retain this spring's new STEM

graduates permanently in America and to help their predecessors to not continue having to wait in endless lines for their dates to come up in the green card queue.

Today the bipartisan leadership of the Judiciary Committee and this Subcommittee received a joint letter from IEEE-USA and the Semiconductor Industry Association (SIA). It is remarkable. Organizations composed of the largest high tech employers on the one hand, and the largest organization of high-tech workers on the other, agree that Congress should focus on green cards, not guest worker visas. This is a sign pointing in the direction that we hope this Subcommittee will go.

This is immigration we're talking about. So, of course there are lots of things to disagree about. But there are some things we clearly can agree on—and we think we should focus on those things. As always, immigration policy should be shaped by what is in our national interest and good for Americans, not by what potential immigrants might prefer.

First, we have 9% unemployment. So our top priority has to be to create and keep jobs in America. We can debate "how." But that is a "what" we all share.

Second, there is a broad political consensus available to build on, that green cards for STEM graduates, starting **this** year, is one of the best available tools for growing jobs in America.

And it's not just jobs—it's the whole economy, including our crippled housing market. No matter how good the jobs, workers on temporary visas are renters. Legal permanent residents with good jobs can qualify for mortgages. They will buy houses.

So what does this mean specifically? Here are some suggestions:

- Create a category for advance degree STEM graduates from quality American universities and move them out from the green card caps. Consider imposing fees on their immigrant petitions to fund STEM education for Americans.

- Create incentives for employers to petition for green cards at the beginning of the employment of skilled foreign-born employees, rather than keeping them in "temporary" status.

- Recapture unused visas from the 1990s (when bureaucratic delays pushed demand away from green cards and into H-1B) so that the long queues of skilled employees can get there green cards now. Create an annual rollover of unused visa to eliminate unused visas in the future.

- Eliminate the per-country limit on employment-based visas, recognizing that the biggest talent pools come from the biggest countries in the world—India and China.

- Impose 30-day processing time limits on labor certification audits, petition adjudications, adjustment of status adjudications and visa interview scheduling to facilitate use of green cards rather than H-1B.

- Provide for continuing renewal of Optional Practical Training (OPT) status on an annual basis (after initial period of 17 months to coincide with May to October transition) if sponsored by a current employer and there is a green card process ongoing (whether for that employer or another).

- Provide for filing of adjustment of status applications based on approved (or concurrently filed) employment-based petitions during periods when visas are not available for the beneficiary for the applicable category to allow the green card process immediately without reliance on H-1B.

The American competitive advantage in immigration is the Ellis Island model. It's not about adding foreigners to our economy. It is adding skilled people who want to become Americans. Giving American employers enough green cards to hire **new** Americans means more jobs **for** Americans—not just those born abroad, but all of us.

Mr. GALLEGLY. Okay. Thank you. Appreciate your testimony.

At this time we will begin with questions and the Ranking Member, Ms. Lofgren will begin.

Ms. LOFGREN. Well thank you very much, Mr. Chairman and thanks to all of the witnesses. The testimony is excellent and I think having a hearing of this nature is very important because

what I am hearing from the policy witnesses is that there is value in retaining top talent, but the H-1B program needs work, to understate it.

You know, I come from Silicon Valley and I hear sometimes from my constituents concern about some of the H-1B visa holders. And I asked the Department of Labor to run prevailing wage numbers for various occupational classifications in Silicon Valley and one of the things that shocked me actually was when they came back with the average wage for a computer systems analyst in my district. They said—well, it didn't surprise me it was $92,000 except that the level one for H-1B was $52,000. I mean that is $40,000 less than what people are paid. So small wonder that there is a problem here. That needs to be fixed if we are going to keep this program. We can't have people coming in and undercutting the American educated workforce, that is just a problem.

And I don't blame really even, you know, I've got a number of wonderful companies in my district that do excellent work, but I mean this is the system they are in as well, and then you have got H-1B visa holders who get frozen in place because they can't move really because they have got a petitioner, if you have got a legit employer. And as time goes on their skill set—I mean inevitably they are going to do more sophisticated work just as their coworkers are doing, but they are still frozen at the wage.

And so this creates problems and I think it is something that we need to fix and that we can fix. But the real issue, as has been discussed, is how can we capture with permanent visas, the individuals who we want to keep to create companies, to do start-ups, to create jobs for American workers.

And I am interested, Mr. Morrison, you are here representing the IEEE but traditionally IEEE, which I think is the largest organization of computer scientists in the world, and the Semiconductor Industry Association didn't always see eye to eye on immigration issues, and yet they came together on a proposal for immigration reform—can you explain how that happened and what the bottom line recommendation is?

Mr. MORRISON. Yes. First of all, I think that Congresswoman Lofgren, you and the Chairman and others have received a letter today from those two organizations and I would hope that it would be made part of the record of this hearing. These organizations don't agree about everything, but they have a focus on the high-skilled, technical workforce that they represent in two ways. IEEE as the representative of workers and students in that area and the SIA as representing companies who employ those people. And both of them together agree that the priority is to keep these skills here in the United States to build employment and production and research and development here in the United States. I think that is shared.

And they have decided to put aside differences and focus on what they have in common, which we hope this Subcommittee might do as well. And that to do that they see the long-term benefits of permanent residence as key to getting rid of the contention that exists, the potential exploitation, the unfair competition that goes on using H-1B.

Ms. LOFGREN. Well——

Mr. MORRISON. So that is why they came together, because they will both prosper if they keep this talent here.

Ms. LOFGREN. I appreciate that. And hopefully we in the Congress can use SIA and IEEE as a role model for our own behavior of doing what is right for the economy of our country instead of fighting over, which we often do unfortunately. I think we can gain consensus.

You know, I have a question, if I could, for Mr. Cooper. You talked about when the H-1B program works, and it does. I mean I have met some fabulous, I mean talented people. The fact that there are abuses sometimes doesn't mean that there aren't also successes. But, if we had a choice to make enough green cards available to keep our best or brightest or to increase the H-1B program, if you had to choose between those two, which would you choose?

Mr. COOPER. They are obviously both very important. You know, as I mentioned before, the H often is—you know, there is such a thing as important temporary use and you have got to have a way to get people in for that. You have also got to have a way to get people on the job quickly, which the green card system, at least today, is not set up to do.

Ms. LOFGREN. Right.

Mr. COOPER. So they are both critical. Between the two, if I had to pick one, you know, frankly I think green cards are the ultimate goal in the end because employers typically wish to bring their H-1B's—I think it is fair to say that employers typically wish to bring their H-1B's permanently into the U.S. workforce. Again, I think that is something that all of us agree is a good thing for the U.S. economy.

You know, what often happens, a very common pattern is that an H-1B employer will hire a professional worker in the H-1B process, start the green card process right off the bat and concurrently be trying to push through the green card process at the same time the person goes for their H-1B status. And often when the 6 years of H-1B status is over they are still not all the way through the green card process.

Ms. LOFGREN. I understand. Yes. I've met many people in that—I would ask unanimous consent for an additional minute——

Mr. GALLEGLY. Without objection.

Ms. LOFGREN [continuing]. So I can ask one question from our Government witness.

I have some frustration that I will disclose, that we have consensus that a need for green cards for highly talented graduates with Ph.D.'s from American universities, and yet from '92 to 2007 we failed to issue the 140,000 employment based green cards, 9 out of 16 years. Can you explain why we are not actually utilizing the visas that we have provided for in the law?

And I have a second question on enforcement. You know, the USCIS as well as the GAO analysis of the H-1B program identified the same problem, which is that the abuses of the H-1B program tend to be localized in a particular kind of firm, staffing companies, small companies, smaller firms, firms with income less than $10 million a year. And yet, the enforcement has been random. And I even hear—I mean whether or not the petition is valid, you know,

I don't think anybody should ask to a see a floor plan of Cisco to see if the company exists, I mean that is absurd, and yet that has happened. So I am just not understanding what the enforcement strategy here is when we know the targeted problem and yet the enforcement seems to be scattered.

Mr. NEUFELD. Can you hear me?

Ms. LOFGREN. Yes.

Mr. NEUFELD. I will take your first question first. I can't really speak to why in years past visa numbers were not all utilized in the employment-based categories. I can say that for the last few years we have been using up all of the visa numbers in the categories. And as you know, the unused visa numbers in the employment-based roll over to the family-based and the family-based visa numbers that are unused roll over to the employment-based.

Ms. LOFGREN. And sometimes neither one gets used because they are rolling back and forth and then they are lost.

Mr. NEUFELD. That is correct. We currently have about a 145,000 pending employment-based adjustment of status applications for which there are not visa numbers available and so those applications for adjustment of status are just held in abeyance. The fact that they are held in abeyance and that they have been pre-adjudicated actually enables us, working with the Department of State, to better manage the use of all visa numbers, because now they are—as we do as much in the way of adjudication as we can without actually putting on an approval stamp and issuing the green card, we go—when we determine that one of these cases is approvable, but for a visa number, we request the visa number of the Department of State and in their IVAM system then they have visibility into the number of pending requests. And so that actually helps them in establishing the priority dates in the visa bulletin, they can see, with priority data a certain amount what the demand will be.

And so we have been quite successful in that regard, in terms of using up the visa numbers with the Department of State's help in managing the visa bulletin.

The other question was with respect to enforcement. And I want to be clear, even though I am not responsible for the Fraud Detection and National Security Directorate, but I an speak to the fact that our enforcement efforts are not solely focused on random site visits. We also have provided to our adjudicators the information that resulted from that benefit fraud assessment in terms of fraud indicators and adjudicators can refer cases to the FDNS because of those fraud indicators or because of information that is contained in a specific filing and then the Office of FDNS can determine whether to pursue that, perhaps do an inspection, you know, a targeted inspection of that employment location or to even refer the matter to——

Ms. LOFGREN. Well, I know—I don't want to abuse the Chairman's time, but I—you should and the Department should make a decision on a case-by-case basis. I am not suggesting just because a company is big that, you know, a petition should be approved. But, it is absurd to ask a company that is publicly traded and has, you know, $300 million worth of real estate and is the largest em-

ployer in a county, whether they exist or not. I mean that is a waste of time.

Mr. NEUFELD. No. And I agree with you entirely. And the implementation of the—of VIBE is one of the efforts that we have undertaken to provide adjudicators with information that they can rely on in—so that they are not solely——

Ms. LOFGREN. Well, but maybe——

Mr. NEUFELD [continuing]. Basing their decisions on what the file——

Ms. LOFGREN.—I should get with you afterwards because this is not—it is not working the way you are describing and it is a waste of resources when there is an enforcement issue that really needs to be done.

Mr. Chairman, I would like to ask unanimous consent to enter into the record statements that were prepared for today's hearing from our colleague Congresswoman Judy Chu on the Committee, from the Institute of Electrical and Electronic Engineers, the IEEE, and from the Semiconductor Industry Association; the Partnership for a New American Economy; the Asian American Center for Advancing Justice; and the American Jewish Committee.

Mr. GALLEGLY. Without objection.

Ms. LOFGREN. Thank you. I yield back.

[The information referred to follows:]

Written Statement Submitted Rep. Judy Chu

House Committee on the Judiciary
Subcommittee on Immigration Policy and Enforcement

Hearing on: "H-1B Visas: Designing a Program to Meet the Needs of the U.S. Economy and U.S. Workers"

March 31, 2011

H-1B Visas are critical to the U.S. economy. It's so vital for businesses to be able to hire the high-skilled, specialty workers they need. Many business people have expressed concern that a scarcity of labor in certain sectors may curtail the pace of economic growth. We need to make sure we bring the best and the brightest to the U.S. to help rebuild our economy and create an even better future for our nation.

As the Subcommittee on Immigration Policy and Enforcement considers the H-1B Visa program I sincerely hope that you will use this hearing to explore fair and reasonable ways to improve the H-1B visa program. I am particularly interested in seeing stronger protections for H-1B workers. This will undoubtedly allow us to attract the most highly qualified candidates in the world to our shores and keep America's competitive edge.

H-1B Visas keep America Competitive

The H-1B visa program is an important tool in ensuring that America has sufficient numbers of skilled, specialized workers to keep our country competitive.

Today, our nation does not have enough American workers with the skills necessary to meet the demand for labor in the STEM fields. A 2010 National Science Board study reported that between 1992 and 2000 – a time period that included the high-tech boom – the "number of the highest-achieving students intending to enter graduate study in an [science and engineering] field declined 8 percent." There has also been a significant decline in the number of top high school students enrolling in or completing a STEM major in college. Until we can grow a strong education pipeline for native workers to fill these positions, we will need to continue to rely heavily on foreign workers to maintain our edge in the technology fields.

Moreover, about half of the advanced degree holders from U.S. universities in the sciences, technology, engineering, and math (STEM) are foreign nationals. Without these visas allowing them to work in the U.S., these students would likely go abroad with their skills, making our country less competitive or prompting U.S. companies to relocate their operations overseas or outsource work. Allowing this to happen will be counterproductive at a time when we need economic growth.

Protections for H-1B Workers

In order to attract the best qualified candidates to fill our critical labor needs, we must also be able to offer the flexibility and fair treatment every worker deserves and expects in the modern age. If we cannot even provide the most basic protections for H-1B workers, they will decide to take their talent and skills to one of our competitor nations. These are real people and how we treat them will inevitably affect our competitiveness and economic success. Reforms are necessary.

Today, H-1B employees have limited ability to change jobs and receive promotions because their immigration status (and any pending green card application) is tied to their sponsoring employer for a specific position. When workers' status and livelihood are tied to one employer, they are more at risk for fraud, exploitation, and wage depression by unscrupulous employers. This lack of employment flexibility harms both individual H-1B workers and their U.S. counterparts who can't compete legally with such dishonest practices. Therefore, I urge you to consider revising the program to allow H-1B workers to change employers and the ability to self-petition for green cards.

Currently H-1B workers lack a grace period if they are laid off, even through no fault of their own. This creates a problem for the worker to remain in the U.S. legally, even if his or her skills are desperately needed in the field, while searching for another position. Today, this results in many workers who have established roots and families in our country, and suddenly find themselves undocumented and facing removal rather than contributing to our economy. Congress should establish a grace period of at least 60 days for terminated workers to allow them to seek new employers or to settle their affairs before they must leave the country.

Conclusion

These minimal protections will allow us to compete more readily with countries that provide more incentive and support for foreign workers. They will undoubtedly help the U.S. keep and grow its competitive edge. Our ability to attract immigrants from all backgrounds with open arms is one of the reasons for our nation's economic success. I urge you to consider these proposals during today's hearing and include them in any reform package.

March 31, 2011

The Honorable Lamar Smith
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Elton Gallegly
Chairman
Subcommittee on Immigration Policy
and Enforcement
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Zoe Lofgren
Ranking Member
Subcommittee on Immigration Policy
and Enforcement
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Smith, Ranking Member Conyers, Chairman Gallegly and Ranking Member Lofgren:

The Institute of Electrical and Electronics Engineers – USA (IEEE-USA) and the Semiconductor Industry Association (SIA) appreciate the committee's recent focus on legal immigration reform, including the H1-B temporary work visa program. As you may know, SIA and IEEE-USA have for some time been at odds over portions of the H-1B program and its administration. However, despite the difficult political issues surrounding changes to immigration policy, we have been working together over the last several years to craft a common understanding on high-skilled immigration reform that emphasizes permanent admissions and the need for immediate efforts to retain highly skilled graduates with advanced degrees from America's top science and engineering programs.

Media coverage of this issue had often highlighted our two organizations different positions on the H-1B program, and overlooked the reform proposals we both support. IEEE-USA and SIA see the permanent retention of highly educated immigrants as part of a broader effort to increase America's competitiveness and create new jobs here at home.

Electrical and electronics engineers design the complex circuits that are embodied in silicon chips, and represent about half of the semiconductor industry's engineering workforce. The success of the $145 billion U.S. semiconductor industry – America's leading manufacturing export -- rests on the efforts of its electrical and electronics engineers to develop innovative products that are better than the competition both here and abroad.

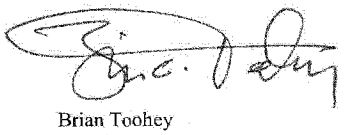
Currently 50 percent of master's and 70 percent of Ph.D. graduates in electrical and electronic engineering from U.S. universities are foreign nationals. These highly talented individuals

should be able to get permanent resident status (green cards) in an expedited manner, rather than having to wait from 5-10 years as many do under the current system. These delays and other pendant problems allow our overseas competitors to recruit talented individuals who simply won't subject their families and careers to an extended and uncertain limbo. For the very top prospects, why would they do otherwise?

SIA and IEEE-USA support immediate action by the Congress to retain these graduates as legal permanent residents. **At a time when job creation is the nation's top priority, the United States must act now to encourage these highly skilled individuals to remain here to create new companies, new products, new technologies, and most importantly, new jobs.** If we fail to act now, we will lose yet another class of talented innovators and the economic benefits of their brilliant work will go elsewhere.

The conversation you begin today with this hearing should start a movement to quickly enact legislation that will allow the United States to welcome this talent permanently into our workforce and nation. Hopefully our own coalition suggests a path for Congress to move quickly to fix this problem.

Very Respectfully,



Brian Toohey
President,
Semiconductor Industry Association
1101 K Street NW, Suite 450
Washington, DC 20005
202.446.1700
www.sia-online.org

Ronald G. Jensen
President,
IEEE-USA
2001 L Street NW, Suite 700
Washington, DC 20036
202.785.0017
www.ieeeusa.org

03312011

PARTNERSHIP FOR A
NEW AMERICAN
ECONOMY

Statement for the Hearing Record by the *Partnership for a New American Economy*, on the House Immigration Subcommittee Hearing on March 31st, 2011, "H-1B Visas: Designing a Program to Meet the Needs of the U.S. Economy and U.S. Workers."

The Partnership for a New American Economy is made up of business leaders and mayors who span the political spectrum and represent every sector of the economy, but who are united in one goal: to ensure American prosperity by streamlining and rationalizing our immigration system.

That is why we greatly appreciate the initiative taken by Chairman Gallegly and Ranking Member Lofgren to address the critical issue of designing the H-1B visa program to meet the needs of this country and its workers.

Recovering from a devastating recession – and facing an increasingly competitive global market with emerging economies eager to both partner with and outperform us – now more than ever, U.S. employers need to be able to enlist the very best talent, without the undue delay caused by a visa system badly in need of reform.

A robust temporary visa program for skilled workers is a vital piece of a smarter American immigration strategy and an important complement to a permanent green card program. Major American companies – from the high-tech sector to manufacturing to biomedical research – rely on the H-1B visa program to hire highly skilled workers to fill highly specialized jobs. To these companies, workers on H-1B visas are not "cheap" labour, but vital staff on their team; and staff that companies are willing to pay a premium to recruit and retain as an investment in economic growth. To make the program even stronger and to protect American and immigrant workers, every effort should be made to address the limited cases of low wages or other frauds, but this should not be at the expense of destroying the program for legitimate American employers. An H-1B visa program that meets the needs of American businesses and protect American workers will help ensure that the American economy continues to grow and compete in the new 21st century global economy.

There is no question that H-1B visas play a critical role in keeping American businesses competitive in the new global economy. Research shows the use of H-1B visas by tech companies actually correlates with additional hiring of American workers – evidence that by helping attract talent from around the world, the visa program helps American companies grow, innovate and export to new markets. The value of H-1B visas as a way to retain talent in America is even clearer when one considers that many so-called "foreign" professionals are the products of American higher education – over 30% of all doctoral degrees in scientific fields and nearly 60% of all engineering doctoral degrees awarded in the U.S. go to international students. Moreover, nearly 40% of the graduates from top U.S. business schools are international students. If these U.S.-trained graduates are not permitted to remain in the U.S., undoubtedly they will go elsewhere to compete against us. The choice, therefore, is ours.

Some would argue that the answer to attracting international talent lies simply in increasing the number of green cards, but we believe it is a false choice between temporary visas and permanent green cards. We strongly support expanding the number of employment-based green cards. However, the 21st century economy is such that U.S. employers need both a way to retain global talent for the long term, and at the same time, have a mechanism to quickly bring the right talent to the right place at the right time for short term assignments. A sensible U.S. visa system needs both temporary visas and green cards, and in fact, both programs should be expanded, helping ensure America can attract – and keep – the best, brightest and hardest working from around the world.

Concerns have been raised that companies prefer the temporary H-1B visas because such workers are "cheap," and undercut pay for competing workers. But this is belied by the fact that an H-1B visa (and each ensuing extension) can cost almost $10,000 in legal and application fees – including fees that support anti-fraud enforcement in the program and efforts to improve American education in science, technology, engineering and math. On top of the fees, immigration law prohibits paying foreign professionals less than their U.S. counterparts. Finally, the recent use of the H-1B visa program indicates that employees on H-1B visas are not a way to save money: During 2007 and 2008, the H-1B program was oversubscribed in a matter of days, while during recessional 2009 and 2010, the program took months to fill. If workers on H-1B visas were a cost-saving measure, their demand would increase in tough times; but instead, evidence shows companies were only willing to invest in visas for foreign workers during an expanding economy.

And while most H-1B workers earn competitive wages, it is still important to acknowledge and address the limited cases of fraud in the program, from not paying requisite wages to other schemes such as creating sham positions. Reducing fraud will ensure employers follow regulations, make the program stronger and help protect all workers. We believe the best strategy to reduce fraud is to increase efforts to identify and punish unscrupulous employers. Curtailing the entire H-1B program to limit fraud would punish legitimate businesses by increasing administrative and regulatory burdens and limiting access to the global talent pool. If the American companies cannot compete, the American consumer, American worker and the American economy will all suffer.

We applaud the committee for your efforts to ensure that the H-1B program is designed to meet the need of the U.S. economy and U.S. workers. We look forward to working with the committee on a smart approach that matches effective enforcement to reduce fraud and protect workers, with an increased number of H-1B visas to meet the needs of legitimate employers who rely on the program to ensure that America continues to lead in the new economy.

Written Statement Submitted by the Asian American Center for Advancing Justice

House Committee on the Judiciary
Subcommittee on Immigration Policy and Enforcement

Hearing on: "H-1B Visas: Designing a Program to Meet the Needs of the U.S. Economy and U.S. Workers"

March 31, 2011

Today the House Subcommittee on Immigration Policy and Enforcement will hold a hearing titled "H-1B Visas: Designing a Program to Meet the Needs of the U.S Economy and U.S Workers." The Asian American Center for Advancing Justice (Center for Advancing Justice) strongly urges the Subcommittee to use this hearing to explore fair and reasonable ways to improve the H-1B visa program to strengthen protections for H-1B workers, which will have a positive impact on American workers and our overall economy.

Collectively, the members of the Center for Advancing Justice are non-profit, non-partisan organizations that enrich and empower the Asian American and Pacific Islander (AAPI) community and other underserved populations through public policy, advocacy, litigation, research and community education. Our mission is to promote a fair and equitable society for *all* by working for civil and human rights and empowering AAPIs and other underserved communities. A well-designed H-1B visa program is important to the AAPI community because the majority of H-1B workers are from Asian countries. Between fiscal year 2000 and fiscal year 2009, 46.9% of approved H-1B workers were from India and 8.9% were from China.[1]

The H-1B visa program is an important tool in ensuring that America has sufficient numbers of skilled, specialized workers to keep our country competitive. H-1B workers are highly educated in the fields that fuel our country's innovation. For example, of the H-1B petitions approved in FY 2009, 40% of the workers held masters degrees and 13% had doctorates.[2] Additionally, about half of the advanced degree holders from U.S. universities in the sciences, technology, engineering, and math (STEM) are foreign nationals. Without these visas allowing them to work in the U.S., these students would likely go abroad with their skills, making our country less competitive or prompting U.S. companies to relocate their operations overseas or outsource work.

---

[1] U.S. Government Accountability Office, "H-1B Visa Program: Reforms are Needed to Minimize the Risks and Costs of Current Program" (January 2011), at 33.
[2] U.S. Citizenship and Immigration Services, "Characteristics of H-1B Specialty Occupation Workers, FY 2009 Annual Report".

The U.S. currently lacks sufficient native-born workers with appropriate skills in the STEM fields to meet demand for those areas.[3] One study reported that between 1992 and 2000 – a time period that included the high-tech boom – the "number of the highest-achieving students intending to enter graduate study in an [science and engineering] field declined 8 percent".[4] There has also been a significant decline in the number of top high school students enrolling in or completing a STEM major in college.[5] H-1B workers fill critical gaps in our workforce and complement U.S. workers.

The H-1B program can create new jobs and economic opportunities for American workers as well. For example, a National Foundation for American Policy study indicated that for each H-1B position requested, U.S. technology firms increased their employment by five workers.[6] Research suggests that being able to fill certain high-skilled positions with H-1B workers may allow firms to increase their business activities, which likely leads to *increased* employment opportunities for, rather than displacement of, U.S. workers.[7] Overall, research shows that immigrants have a positive effect on our economy. Immigrants are highly entrepreneurial and frequently start their own businesses, which creates jobs for U.S. workers. One study showed that 25% of technology and engineering companies started in the U.S. between 1995 and 2005 were founded by immigrants and produced $52 billion in sales and employed 450,000 workers.[8]

The current program contains safeguards to protect American workers from displacement or other adverse impacts. An employer petitioning for an H-1B visa must attest that no U.S. worker could fill the position. Employers that rely upon a large percentage of H-1B workers must also go through an extensive recruitment process to try to obtain a U.S. worker before they hire a foreign national. H-1B workers must receive the same wage, hours or shifts, and benefits as U.S. workers. In addition, a Department of Homeland Security assessment showed that an overwhelming percentage of employers complied with existing regulations.[9]

Despite the program's positive impact, many workers and employers face challenges under the current structure and certain critical reforms are necessary. First, H-1B workers currently have limited ability to change jobs and receive promotions because their immigration status (and any pending green card application) is tied to their sponsoring employer for a specific position. This significantly increases the potential for fraud,

---

[3] American Behavioral Scientist, "Special Issues on Science and Technology Workforce" (2010), at 944.
[4] National Science Board, "Preparing the Next Generation for STEM Innovators: Identifying and Developing Our Nation's Human Capital," (2010).
[5] *Id.*
[6] National Foundation for American Policy, "H-1B Visas and Job Creation" (March 2008).
[7] *Id.*
[8] UC Berkeley School of Information, "America's New Immigrant Entrepreneurs" (2007).
[9] U.S. Citizenship and Immigration Service, "H-1B Benefit Fraud & Compliance Assessment" (September 2008).

exploitation, and wage depression by unscrupulous employers.[10] This lack of visa portability harms both H-1B workers and U.S. workers. Congress should revise the H-1B program to allow greater flexibility for workers seeking to change employers and provide workers the ability to self-petition for green cards.

Second, H-1B workers currently lack a grace period if they are laid off. If an H-1B worker loses his job, it is difficult for him to remain in lawful status without obtaining immediate sponsorship from a new employer. As a result, many workers who have established roots and families in our country suddenly find themselves undocumented and facing removal rather than contributing to our economy. Sudden job loss is extremely disruptive to workers' families and communities. For example, some H-1B workers who lose their jobs end up defaulting on home mortgages and eventually lose their homes because of foreclosure when these workers are forced to abruptly leave the U.S. Congress should establish a grace period of at least 90 days for terminated workers to allow them to seek new employers or to settle their affairs before they must leave the country.

We urge the Subcommittee to recognize the important role the H-1B program plays in maintaining our country's competitive edge in the global economy and creating jobs for U.S. workers. We should continue to find ways to recruit and retain talented workers, particularly as our economy recovers and strengthens. At the same time, Congress should reform the H-1B program by increasing the ability of H-1B workers to change employers and respond to changing labor conditions. Thank you.

[10] Migration Policy Institute "Aligning Temporary Immigration Visas with US Labor Market Needs: The Case for a New System of Provisional Visas" (July 2009), at 9.

Office of Government
and International Affairs
1156 15th Street, NW
Washington, DC 20005
t 202.785.4200
f 202.785.4115
www.ajc.org

Statement of
Richard T. Foltin, Esq.
Director of National and Legislative Affairs
Office of Government and International Affairs
American Jewish Committee

Submitted on behalf of the American Jewish Committee to
The House Judiciary Subcommittee
On Immigration Policy and Enforcement

Hearing on
H-1B Visas: Designing a Program to Meet the Needs of the U.S. Economy and U.S. Workers

March 31, 2011

T: (202) 785-5463, F: (202) 659-9896
e-mail: foltinr@ajc.org

From its founding in 1906, the American Jewish Committee (AJC) has been a strong voice in support of fair and generous treatment of immigrants, participating actively in many of the major immigration debates of our time: opposing reductions in the flow of legal immigrants and supporting the increase or the elimination of quotas for high and low-skilled nonimmigrant worker visas; supporting increased "family unification" immigration; supporting efforts to reduce the flow of illegal immigration and enforce immigration laws within the context of due process and humane treatment; supporting policies that assure that the U.S. fulfill its role as a haven for refugees fleeing persecution; supporting access to public benefits for legal immigrants on the same basis as citizens; and supporting programs designed to educate and integrate new citizens.

In advocating for these policies, AJC continues to reaffirm its commitment to fair and generous immigration policies, as fundamentally good for the United States economy and consistent with Jewish values. History has demonstrated that immigrants enrich this nation economically and culturally, and immigration remains a central ingredient to retaining America's economic strength and its proud tradition of democratic pluralism. As such, AJC supports immigration reforms to increase or eliminate the numerical limit of nonimmigrant visas for high-skilled workers in proportion to our country's economic demands, and reforms to the immigration system to establish a more fair and sensible pathway to permanent legal status for qualified workers and their families.

Nonimmigrant temporary workers seeking employment in the United States are generally classified in the "H" visa category.[1] The largest number of H visas are issued to temporary workers in specialty occupations, known as H-1B nonimmigrants. The U.S. Department of Labor (DOL), through a comprehensive process, is responsible for ensuring that foreign workers do not displace or adversely affect wages or working conditions of U.S. workers. If DOL concludes that a nonimmigrant worker is in demand and there are no U.S. workers available or qualified for that respective job, that prospective H-1B nonimmigrant must then demonstrate that he or she has the requisite education and work experience for the posted position. Only after satisfying these steps, and all other immigration requirements, may the petition for the H-1B nonimmigrant visa be approved.[2]

The current nonimmigrant worker visa program is problematic because it allows the visa holders to live and work in the U.S. only temporarily and under very restrictive circumstances. Because it is difficult for these workers to transition to permanent resident status, many of the best and brightest workers are unable to remain, or dissuaded from remaining, in America. This results in a huge loss of human ingenuity, talent and skills from the United States economy. Also, the current nonimmigrant worker program has created a system where some employers take advantage of the cheaper temporary

[1] A nonimmigrant is an alien legally in the United States for a specific purpose and a temporary period of time. There are 72 nonimmigrant visa categories specified in §101(a)(15) of the Immigration and Nationality Act (INA), and they are commonly referred to by the letter that denotes their section in the statute.

[2] CRS Memorandum, "H-1B Visas: Legislative History, Trends over Time, and Pathways to Permanent Residence," by Ruth Ellen Wasem, Mar. 2006.

worker labor, undermining the integrity of the labor market and placing workers in precarious positions that invite exploitation and insecurity. Skilled immigration reform is also critically important to U.S. economic recovery. In these challenging economic times, providing employers with adequate numbers of skilled workers is one of the best resources for companies to increase capital investment, create new jobs, and compete in a global economy.

Understanding these problems, AJC recognizes the benefits of creating a more accessible pathway for these workers to transition to legal permanent resident status over time. Such a process would strengthen the United States economy by creating incentives for skilled and in-demand foreign workers to remain in America; reduce the likelihood of worker exploitation by employers; and strengthen our communities by allowing these immigrant families to establish roots in America. Such reforms are in the best interest of our country's economy and our local community's well-being.

In sum, and in accord with our support for fair and generous treatment of immigrants, AJC urges the members of this committee to support immigration policies that increase or eliminate the numerical limit of nonimmigrant visas for high-skilled workers in proportion to United States economic demands, and reforms to the immigration system to establish a more fair and sensible pathway to permanent legal status for qualified workers and their families.

AJC appreciates the opportunity to submit this statement and welcomes your questions and comments.

Mr. GALLEGLY. Seeing that my time is expired. [Laughter.]

We do have a very good bipartisan relationship on this Committee and I respect the gentlelady's right to be wrong periodically. So—— [Laughter.]

Ms. LOFGREN. And you also.

Mr. GALLEGLY. Mr. Neufeld, what happens when the Office of Fraud Detection and National Security discovers fraud or technical violations in a petition? Are such cases denied or revoked by ISCIS or are such cases referred to USCIS or ICE for further investigation?

Mr. NEUFELD. I was checking to make sure my mic was still on. Yes, they—actually the Office of Fraud Detection and National Security can do either, which ever makes sense on that particular case. If—they can either refer it to an adjudicator with their findings and then the adjudicator can institute—issue a notice of intent to revoke. It gives the petitioner a chance to respond to the information that we have. But then if there is in fact fraud, then the adjudicator can revoke the previously approved petition.

Also, the Fraud Detection National Security officers can refer the matter to ICE for either further investigation or for prosecution.

Mr. GALLEGLY. Are you satisfied that the system is working?

Mr. NEUFELD. Yes.

Mr. GALLEGLY. Dr. Hira, in your testimony could you explain what you mean when you say that some companies use their H-1B's to engage in knowledge transfer?

Mr. NEUFELD. Let me turn my microphone on.

Sure. Knowledge transfer is a term of art, it the site actually a euphemism for forcing American workers to train their foreign replacement. Basically with they are doing is transferring their knowledge and capabilities to either an H-1B worker or in many cases an L-1 intercompany transfer worker and that worker may stay, that guest worker may stay right there on site and/or may take that knowledge and take it back to their home country and offshore the work and do it from offshore. And this is—it is common enough to have its own term. Right, knowledge transfer.

Mr. GALLEGLY. Mr. Morrison, you were recently quoted as stated that, if I knew in 1990 what I know today about the use of H-1B visas for outsourcing, I would not have drafted it so that staffing companies of that sort could have used it. You want to elaborate a little bit on that?

Mr. MORRISON. Sure. And let me say that in another life I represent a staffing company in the healthcare field. So I don't think staffing as a way of participating in providing goods and services in the American market is a bad thing. The bad thing is when there is a model that does not participate in the American workforce, by hiring Americans and sometimes foreign-born, just like American employers do, and providing services in a staffing model as opposed to in a direct employment model. Those are choices that employers can legitimately make and there are reasons to use both.

But, the model that seems to have developed is a model of companies that exclusively use H-1B visas and sometimes L-1's, and I don't know how they do that legally, and bring a particular nationality to the United States and provide services and then often transfer those workers back with the knowledge that Dr. Hira was

just describing, going back and becoming intellectual property for somebody else. That kind of activity I think is very troubling. It is not really legitimate staffing in the U.S. labor market, it is something else. And I think the H-1B program shouldn't countenance that kind of structure.

Mr. GALLEGLY. I think—Mr. Cooper, can you expand a little bit on your point that many employers of H-1B workers pay more than the prevailing wage?

Mr. COOPER. Yes, Mr. Chairman. The way that the——

Mr. GALLEGLY. Hit the button.

Mr. COOPER. The ways that the rules work is that it is not actually the prevailing wage that is required of an employer, it is either the prevailing wage which is sent by the Department of Labor or what that employer actually pays to workers doing the same job in the same place, which ever is the higher those two. And what actually happens in the marketplace, especially when the economy is strong, is you know, we have got to remember that what is—with this group of people that typically are the subject of H-1B's there is a massive competition for them between employers in the U.S. and employers in competitor countries and among employers in the United States. And so you know, that competition can heat up and often the actual wage is much higher than the prevailing wages.

The prevailing wage is reflected in these LCA's that are filed with the Department of labor and that is unfortunately, you know, the—what gets reflected in a lot of the statistical debate But, in the marketplace it is actually the—a much higher wage that is being paid to H-1B workers.

Mr. GALLEGLY. Thank you, Mr. Cooper.

Mr. Conyers?

Mr. CONYERS. I yield to Jackson Lee.

Mr. GALLEGLY. Ms. Lee.

Ms. JACKSON LEE. I thank the Ranking Member of the full Committee for his courtesies. I thank the Chairman of this Committee and the Ranking Member for an astute assessment of a very important issue.

I have had the privilege of serving on the Imigration Subcommittee, I believe for almost a decade, serving as a Ranking Member and remember discussing this issue of H-1B visas, Mr. Hira, particularly on the question of where are the talented Americans who could do the same jobs. In one instance we were carefully looking at the question of African-American engineers who had raised a concern about their ability to be employed.

At the same time I have to be a practical legislator and realize that there were periods in our history, which were not 50 years ago but recent, when our friends in Silicon Valley and elsewhere made some eloquent arguments in the earlier stages of their development. I am very glad to report, however, that every youngster coming out of college is either a venture capitalist and they want to be involved in IT. We have the talent. It doesn't mean that H-1B visas cannot find a place but I join with the Ranking Member on raising the question about the validity and the better structure of green cards.

And as I do that, I think it is important—I would be remiss if I did not put on the record, and I know my—the collegiality of the

Chairman and the Ranking Member leads me to be inspired that we will have an opportunity to look at comprehensive immigration reform and really fix this system that doesn't suggest amnesty and it doesn't violate the virtues of my friends on the other side of the aisles, but it will keep youngsters who are here, called Dream Kids, able to become citizens and to contribute well to the United States. I hope the Administration will be actively engaged in this, Mr. Neufeld.

So let me try to pinpoint one of the angst that I think can be fixed immediately. Our lawyers tell us, and those of us who are lawyers know not to lawyer our cases here, that the statute that deals with wages for these workers is very broad. The one about prevailing wages and I think Mr. Cooper acknowledges the highest rate is kind of confusing. The Government has all kinds of authority, we are already sort of baffled why we are not fulfilling our obligation on the 140,000 that my colleague asked about, we are confused about that. But I would like to know really the details of these low wages.

I appreciate, Mr. Cooper, but I believe you are on the hot seat because we are in—able to do a lot of things by making or raising questions and I want to know whether you have reached out to Department of Labor to use the power you already have to really not have a nebulous prevailing wage but to actually have a requirement of what it is that has to be paid if we are using these visas, in order for us to be competitive and not to harm American workers.

My second question is the idea of having this 90 day period when an American worker is retained, Mr. Neufeld, and we hear the rumor that they are training the H-1B visa person who then boots out the well trained American worker. The low wage, the multiple use of H-1B visas for talents that are already here. That may not be your jurisdiction, but certainly it is your jurisdiction to make sure that we are not dumbing down the wages of Americans and really unfairly treating these individuals, because I am going to get to my next question quickly.

But let me just get that as quickly as you can, please. I want you to go to the Department of Labor and work this out. I want to have a wage that we can all understand.

Mr. NEUFELD. Fortunately or unfortunately we—I can only enforce the statute and the regulations as they are written. And that doesn't provide USCIS with the authority to look any further than the labor condition application that was filed with the Department of Labor and to make sure that they—that employers are in fact paying either the prevailing wage or the——

Ms. JACKSON LEE. I think you can make an inquiry. That is not an unacceptable act. I can call the Department of Labor. You are not prohibited from calling the Department of Labor. If you are intimidated, use your leg. affairs and have leg. affairs from each department just try to get a sense of you moving forward on this issue.

Go ahead, you can finish your answer.

Mr. NEUFELD. Oh, I can—I am happy to engage our office of legislative affairs to work with theirs in that vein.

Ms. JACKSON LEE. Mr. Chairman, I ask for additional 1 minute.

Mr. GALLEGLY. Without objection, 1 minute.

Ms. JACKSON LEE. I thank you very much.

Let me also ask a question about the idea of do you have anything that you hold as a standard of American workers being replaced or do you do that only—you think that is only a Labor Department issue?

Mr. NEUFELD. Well, it is mostly a Labor Department issue but we do—there are requirements that change depending on what percentage of the workforce of a particular employer is made up of H-1B employees. And for those employers who exceed, I believe it is 15 percent of their workforce or comprised of H-1B employees, then the labor condition application that is filed with the Department of Labor contains some additional attestations that are required in terms of the—not bringing folks in to replace current workers and I also believe that it is——

Ms. JACKSON LEE. All right.

Mr. NEUFELD [continuing]. Not a requirement only——

Ms. JACKSON LEE. I just want to get quickly to Mr. Morrison.

Mr. Morrison, give me again your most forceful argument for the value of green cards in the spirit of we must create more jobs, we must be able to respect the American worker and we also understand we need a fair immigration policy.

Mr. MORRISON. I don't promise it will be the most forceful, I will try my best. I think that permanent residence is our competitive advantage, number one, as a country. And putting people on the road to becoming Americans is a key part of having this work well for the whole country. When people have permanent residence they are free to move around the workforce and they have market power to enforce terms and conditions of employment, which H-1B workers don't really have and you have to have a complicated regulatory scheme to get at it.

In addition to that, those people who are here permanently can start their own businesses and create additional jobs that way. And there have been many who have done that when they finally got green cards. But by holding this process back for years at a time, by a combination of lack of visa numbers, bureaucratic delays and the attractiveness of the H-1B status to employers we miss out on those benefits and we lose many of the talent. But——

Ms. JACKSON LEE. Well, I thank the Chairman. I want to be able to protect American workers and balance this whole idea of immigration reform and generate jobs so that American workers stand equal to anyone who seeks to come to this country and gain great opportunity, which is the American way.

I yield back. Thank you.

Mr. GALLEGLY. Time of the gentlelady has expired.

Mr. Gohmert?

Mr. GOHMERT. Thank you, Chairman and appreciate each of the witnesses being here today.

Mr. Neufeld, the Government Accountability Office raised concerns over large numbers of H-1B aliens being nationals of countries of concern who may be gaining unauthorized access to duel use technology with military applications. How does USCIS coordinate with the Commerce Department to ensure H-1B employers obtain deemed export licenses before employing such aliens?

Mr. NEUFELD. Thank you. We recently—USCIS recently revised the I-129 Petition which is the form that employers use to bring in nonimmigrant employees to include an attestation section, that is part six, that—so that it requires employers to both acknowledge and attest that they have read and become familiar with the export control requirements and to indicate whether the employee will have access to controlled technologies and if so, to attest that they will obtain the appropriate licenses from either Department of State or Department of Commerce before allowing them access.

Mr. GOHMERT. There is any follow up or checking on that or is it just a statement required?

Mr. NEUFELD. For our adjudication it is just—we do require the attestation. If that section is left blank then we will request it be completed. And if they refuse then we would deny the petition. Other than that, it—the legacy systems that we have right now don't allow us to capture that, the responses electronically and then share that with the Department of Commerce. We are working with them to make the best use of our systems that we can. And in response to requests from them, we can identify all of the filings by a particular employer that may be of interest to them and then allow them access to the physical files to review the answers to those questions.

Mr. GOHMERT. Is that always done?

Mr. NEUFELD. Well, this is new. This——

Mr. GOHMERT. Okay.

Mr. NEUFELD [continuing]. Question was just recently added and became effective in February.

Mr. GOHMERT. All right. Okay. Just recently, huh? Well and sometimes it takes Government a while to—in fact many years. People can be encouraged with the Government taking over healthcare, if you have got a problem many years later we will be able to get around to it.

But with regard to healthcare, obviously that is a hot issue here on the Hill. This country is projected to spent $3.75 billion and we are only bringing in 2.1 billion this year. We can't afford to keep bringing in people and paying for their healthcare. I was curious, on the H-1B petition, is there any requirement for a statement as to whether or not any hospitalization or medical care is anticipated by the petitioner coming in?

Mr. NEUFELD. I have to say that I don't know the answer to that question, but I would be happy to look into it and——

Mr. GOHMERT. Okay. Could you provide us a written answer to that question as to whether—and not just H-1B, on any petition or application for visa, is there a requirement that the applicant or petitioner state whether or not any type of medical or hospitalization care is anticipated.

Mr. NEUFELD. I will certainly do that.

Mr. GOHMERT. All right, thank you.

Mr. Morrison, you had stated in your testimony that we should create an unlimited green card category for advanced degree STEM graduates from quality American universities. And of course it may be an interesting question how we determine which ones are quality. But when Australia tried something similar they found what happened was that the quote, the reformers did not anticipate the

alacrity with which Australia's universities would set up courses designed to attract international students looking for the cheapest and easiest ways to obtain qualifications and occupations that could lead to permanent residence.

We know in Texas, for example, Texas Tech is—I would consider a quality school, yet we just had one of their persons here on a visa arrested for plots to kill people and destroy things. I am curious, how could we prevent an outcome where universities maybe are quality, maybe they are not quality, rushing to provide courses that people could come in and take so we end up taking people that probably we shouldn't.

Mr. MORRISON. Well, obviously any provision needs to be tailored carefully. But, the National Science Foundation does identify programs in the country in a tiered system as to the level of quality based on the kinds of grants that they are able to achieve. So the government already makes judgments about levels of quality of our universities, especially in this area of science and technology which is what we are talking about. So I would suggest we use that expertise which is—already exists in the Government in judgments about where the quality programs are.

And those quality programs depend on competitive grant programs from the NSI and the NIH and others in order to survive. They can't just add people to their programs and be successful. They have to have high quality students to do that work and high quality professors. So while, you know, if we are talking about——

Mr. GOHMERT. Of course you understand that is not what Australia said their experience was.

Mr. MORRISON. Well, I am not an expert Australia. Australia relied a lot on points and other things that weren't nearly as tailored as the U.S. system is. So I would say you—this Subcommittee could write a rule, based on what we already know about where the quality is, that could avoid the abuse and still take advantage of that talent. And I think that is, you know, that is the job that I would hope that you would——

Mr. GOHMERT. And you are willing to put your entire credibility on the line by swearing here that somebody in Government has expertise? [Laughter.]

Mr. GALLEGLY. The time of the gentleman is expired.

Mr. MORRISON. Thank you, Mr. Chairman.

Mr. GALLEGLY. Mr. Conyers?

Mr. CONYERS. Thank you very much, Mr. Chairman.

Morrison, you were a workers guy, now you are a free market type talking guy. What happened to you—— [Laughter.]

Mr. CONYERS. Since you—is there any reasonable explanation for your change of philosophy?

Mr. MORRISON. Oh, I am not sure I made a change of philosophy, but I wanted to say is this, if we want to protect workers we need to give them choices. And what green cards do is give them choices. Sometimes Government can do things, but Government's ability to do things is limited.

You are all familiar with the reports that show the Department of Labor doesn't really even enforce our wages and hours laws right now. I mean we have a whole lot of laws on the books that don't get enforced. So, if that is the case let's at least use the power of

the market when it helps to create a level playing field. And I think compared to the H-1B, the green card playing field is a lot more level.

Mr. CONYERS. Well, that is a reasonable explanation. [Laughter.]

But, I remember when you used to think the free market wasn't very free.

Mr. MORRISON. It is quite expensive actually, but well, maybe I am guilty maybe I am not. I—either I have learned something or there was a misunderstanding.

Mr. CONYERS. Mr. Hira, I want to compliment you for bringing up a subject that is important to almost everybody with an industrial sector in their state. When you start—would you explain a little more about the Government subsidizing offshore American jobs through immigration policy?

Mr. HIRA. Sure. If you just look at the top employers, the top ten for exactly, employers, recipients of H-1B's, it is essentially a who's who of the major offshore outsourcing firms. The—they are mostly based in India but many of them are even based here in the U.S. They are the major beneficiaries. And what—so what we are doing with this H-1B program, because there are so many loopholes is we are actually giving advantages to those particular firms.

And let me give you examples of two firms that are competing directly with these offshore outsourcing firms, trying to hire Americans. One is a company that has a facility in Ann Arbor, Michigan called Systems in Motion and in fact they are trying to hire Americans. And they are a very interesting company because the CEO and some of the executives are actually veterans of the offshore outsourcing industry, so they know the exploitation of the H-1B's and the program. And what they are finding is that they are put at a competitive disadvantage because the firms that are exploiting the loopholes can bring in workers at lower wages, train them and ship them overseas.

I think that if we close these loopholes, that we would create and/or retain tens of thousands of jobs and that this would not cost anything and would not have a major impact on the budget. And you could just look at it in terms of the numbers of visas that these firms are getting. And it is pretty clear they are not bringing them for permanent residence.

I have done some analysis of that. You know, Tata Consultancy brought in 2,400 workers on H-1B's, they applied for exactly zero green cards for their H-1B workers. What are they using those H-1B workers for? To do offshoring. They are the largest Indian IT offshore outsourcing firm.

So I think these loopholes could be closed. And I don't see that at least the folks that Mr. Cooper represents would object to those kinds of closing the loopholes, if they really want to bring in the best and brightest and keep them here permanently.

Mr. CONYERS. Well, Chairman Gallegly, I think this is probably within our jurisdiction too. This is something that I think we can examine within the Judiciary Committee.

Mr. GALLEGLY. Your point is well taken.

Mr. HIRA. Could I also just—could I just add?

Mr. GALLEGLY. Sure.

Mr. HIRA. And the companies themselves have said that this is part of what they do in their business model. So executives from Wipro, for example, have been quoted in Business Week saying they bring in workers for the express purpose of knowledge transfer and to take that knowledge and capability offshore.

Mr. CONYERS. Well that—makes it kind of convenient for us to take care of the business here.

Mr. Cooper, I appreciated you beginning our discussion that this isn't immigrants versus—we are not taking jobs from Americans when we move folks with this kind of skill into citizenship. I think that was a very important comment.

And finally, I think that you, Mr. Neufeld, can't we do something about this prevailing wage business without—don't you have it within your power, your department's power to do something about this?

Mr. NEUFELD. What USCIS does is——

Mr. CONYERS. Make it permanent? Well, you will have to get together with our good friend the Secretary of Labor and can't something be done here?

Mr. NEUFELD. Again, what we can do is make sure that it is addressed in the filing of the petition, that they have the labor condition application from the Department of Labor that says that they will be paying the prevailing wage or the higher—the actual wage, whichever is higher. And that is our role to make sure that that attestation has—is in there. Beyond that it is up to the Department of Labor to determine what the prevailing wage is and what is the higher——

Mr. CONYERS. Well, the four tier system ensures that you will always hire somebody at the cheapest wage you can. I mean that is not hard to figure out.

Mr. COOPER. May I address that point briefly? One thing that I think it is important to keep focused on is what can we do with today's rules to make the program better and are we losing any opportunities to do so today. And you know, on this point of enforcement, there is a great deal of money that is put into the Government treasury for this particular purpose. With respect to prevailing wages, there are a lot of tools out there and it is important for us not to gain a misconception, I think an overall misconception of the program is one that is—that endorses underpayment.

The Department of Labor has very specific authority to go in and investigate and address whether an employer has actually slotted an employee into too low a slot on this prevailing wage scale. No matter how you calibrate the wages there is always the ability to go find cheaper——

Mr. CONYERS. Yeah, but they don't do it.

Could I get 1 minute more, Chairman Gallegly?

Mr. GALLEGLY. Without objection.

Mr. CONYERS. Look, we got a recitation of what we can do and how we review and how we oversight. An H-1B that gets a job, the first time he squawks, that is the end of it, he is shipped back, you never have a chance to investigate anything and they know it. So, let's get some reality here going about how—we have got a lot of rules, but they don't mean anything if you can't change jobs and if you can't lodge a legitimate grievance.

Mr. COOPER. Yes, I think that is a very good point. But one thing for us also to keep in mind about that is that—is that it is possible for—you know, there are ways for an H-1B worker to squawk if they are getting cheated and for the Department of Labor to respond. And, it is possible actually——

Mr. CONYERS. What ways?

Mr. COOPER. You can file a complaint with the Department of Labor and they have got the authority to do investigations and——

Mr. CONYERS. Please, Cooper, give me a break. [Laughter.]

I mean the—as soon as that paper hits the employers desk or goes to Labor that guy is on a boat back to wherever he came from.

Mr. COOPER. Well, there actually are rules that permit pretty freely that employee to go—there is a market, they can go work for an employer very readily. You can change jobs——

Mr. CONYERS. H-1B you can't change jobs.

Mr. COOPER. There's—Congress wrote special rules that permit an H-1B to go work for a new H-1B employer——

Mr. CONYERS. Oh, come on.

Mr. COOPER [continuing]. Called portability.

Mr. CONYERS. And I gave you so much credit when we started out this morning with the hearing. I mean look, you—a person here on a H-1B better keep his trap shut, work under whatever conditions that are given and better not be thinking about going to get another job, citing section something 1(b) with a paragraph, et cetera. That won't get it in—out of the market today.

Ms. LOFGREN. Would the gentleman yield?

Mr. CONYERS. Sure.

Ms. LOFGREN. As you were talking it occurred to me that one of the pieces of information that I have never seen—we did write in a portability provision and the reason why was to prevent kind of this freezing, but I don't know if it has been used, you must have statistics that would tell us how often, if at all.

Mr. CONYERS. It has never been used.

Ms. LOFGREN. And I would like—I am wondering if—if you have it now, tell us. If you don't, could you tell us later how often, if at all, the portability provision has been used.

Mr. NEUFELD. I certainly don't——

Ms. LOFGREN. I thank the gentleman for yielding.

Mr. NEUFELD. I certainly don't have statistics here with me. I am not sure that we—those statistics exist. If they do, of course we will be happy to share them. I——

Mr. GALLEGLY. Mr. Neufeld, in the interest of time, we have had eleven minutes on this one inquiry, so perhaps you could get the information to Mr. Conyers and also Miss Lofgren and to the Committee as a whole, to the best of your ability? And then if that is not satisfactory there will be opportunity for follow up.

The gentleman from Texas. Well, I am sorry, the gentleman from Iowa, the vice-chair of the Committee, Mr. King.

Mr. KING. Thank you, Mr. Chairman. Recognized for eleven minutes I presume. [Laughter.]

I will not do that to you, it makes your job too difficult. But I appreciate the witnesses testimony. And I would like to add, if we could, bring a certain perspective to this discussion that I don't know that has been examined.

And let me start with this. Is it a safe presumption that each of the witnesses at the table were supportive of the Bush/McCain/Kennedy immigration reform proposal around 2006? And I guess I will start on the end then with Mr. Neufeld and go down the line, a yes or a no will be helpful, please.

Mr. NEUFELD. Well, as a government employee I don't think it is appropriate for me to comment on that.

Mr. KING. I expected that. [Laughter.]

Mr. Cooper?

Mr. COOPER. With respect to the high-skilled issues that we are addressing today?

Mr. KING. With respect to the full proposal.

Mr. COOPER. I think it had—I think it was very sound in a lot of ways and it had some problems.

Mr. KING. You generally supported it or generally opposed it?

Mr. COOPER. I would say I generally supported it.

Mr. KING. Thank you.

Mr. Hira?

Mr. HIRA. My expertise is on the high-skill side and on that and I would oppose it. I thought it was very bad.

Mr. KING. Thank you.

And Mr. Morrison?

Mr. MORRISON. Yeah. Mr. King I am here on behalf of IEEE and they don't have a position on that specific matter so I don't think it is appropriate for me to say anything on this record. If you would like to query me on a personal level at another time I would be happy to answer that.

Mr. KING. And they did not have a position in 2006, would that be also your testimony?

Mr. MORRISON. They didn't have a position on the overall comprehensive reform bill. That is right.

Mr. KING. Okay. Thank you. And that is also an appropriate answer, I want to acknowledge.

And so now I want to start back down through this list and pose a couple of other questions that we have got a little bit of a parameter to work off of. You know, first I will just make this statement and I will offer it to anybody to seek to rebut it. But I pose this question as more than rhetorical, but where there are two different categories of illegal—of immigration we need to deal with before we can get to H-1B, and that is legal and illegal. And I want to make the statement that—and I would ask this question, how many illegals are too many and I am going to say the universal answer needs to be one. And so if anyone would care to rebut that statement I would offer the floor to you, or if we can accept that as a foundation to carry on the discussion, I will let the record show that no one sought to rebut that statement.

So, let's go on to the next one then. Is there such a thing as too much legal immigration? And as a Government official I will exempt the gentleman, but Mr. Cooper, I would start with that. Is there such a thing as too many—of legal immigration, whatever the category?

Mr. COOPER. I think that with respect to the categories we are dealing with today there is not enough legal immigration.

Mr. KING. And Mr. Hira?

Mr. HIRA. I think that there can be too much and I think there needs to be controls, in terms of numbers and the impacts, for example, on jobs and wages can really be significant.

Mr. KING. Thank you.

And Mr. Morrison?

Mr. MORRISON. Immigration should be driven by the American national interest and the Congress should determine what that interest is and set numbers that reflect that interest. I agree with Mr. Cooper that in this area of high-skilled, advanced degree, STEM graduates that we have been talking about, we need more numbers. And more importantly than numbers, we need people to be able to quickly——

Mr. KING. Okay. That would be your——

Mr. Morrison:—gain that status.

Mr. KING. Thank you. That would be your editorialization on this. But I think I misheard Mr. Cooper, I thought he said in this era. You mean in this area, not in this era?

Mr. COOPER. In this area.

Mr. KING. Okay, thank you. Because it is a big difference in the area and that is this, I will just take my position here and that is that there is such a thing as too much legal immigration. Too much legal immigration also drives down wages and over supplies in the workforce. And we are in a precarious position here in this country. And I would agree with Mr. Morrison to this extent, I believe an immigration policy should be designed to enhance the economic, the social and the cultural well being of the United States of America or which ever nation is drafting its policy, selfish interest if you will. And developing our economy with that as an important component of it, I look at this and I think H-1B's as a separate category have significant merit, but written into the broader picture of this when we don't take into account the growing numbers of legal immigrants that are taking up the growth in jobs, even when our economy was healthy we were bringing in between 1 and 1½ million legal immigrants a year which occupied the growth in new jobs completely over at least a period of a decade.

So I think we should look at this thing more broadly than we do, not within the narrow H-1B bounds, but within the broader scope of what is a whole policy here instead of a part of a policy. I know I can go over here and justify about every appropriations that will come up on the floor of the House and if I vote for every one we will bust the budget. Well, we have a budget here of population too and skills and today we have a welfare state that has been created over the last—well, it hasn't taken a full century, we know that have had witnesses before this Committee that testified that there are 71, at least 71 means tested welfare programs and we have a subsidy of low wages in other categories of immigration that are accommodated because of the means tested welfare that we built. So that does tend to subsidize the employers.

I believe we need a stronger, tighter labor market and labor is a commodity like any other commodity that you need. And it sets its value by supply and demand in the marketplace. So I get uneasy when I hear the former Chairman Conyers talk about prevailing wage. I don't think we should support any kind of pre-

vailing wage. I don't think Government can set the wage, I think the economy sets the wage.

And I think that if we have got some 15 million unemployed in the country and when you add that to the broader perspective of that there are another 6 or 8 million that are underemployed or have dropped out of the workforce and you look at the Division of Labor or the Department Labor statistics that show that there are 80 million Americans of working age that are not working, we are in a condition here where we have a lot of people that are riding and not enough that are rowing.

And so I think we need to look at H-1B's within the broader perspective of what would be the good overall policy for the United States of America. And I think we should look at some of these countries that have a point system where they score all of their immigrants according to their—the legal immigrants according to their ability to assimilate and the skill level they have, the talent that they have. Those things are—run very high on my scale.

So I just want to tell you, philosophically, I agree with upgrading America, but I think we should do it on a broader scale.

Thank you. And I yield back.

Mr. GALLEGLY. Gentleman from Florida, Mr. Gowdy? I'm sorry. Mr. Ross?

Mr. ROSS. Thank you. You just——

Mr. GALLEGLY. Gowdy is from South Carolina.

Mr. ROSS.—That's okay, you just complimented him.

Mr. GALLEGLY. Greenville, Spartanburg. That's right. I didn't mean to slander you. [Laughter.]

Mr. GOWDY. You did. You did.

Mr. ROSS. Thank you, Mr. Chairman.

One of the issues I want to go back to is the intellectual property protections, because I think it is rather disconcerting, especially in my district where I have a telecommunications company that is using H-1B visas. And then once they have expired then they are not only moving the employees back but they are moving the whole operation back. And I know that good employers will have confidentiality agreements to protect patents and proprietary inventions and things of that nature, but Mr. Neufeld, shouldn't there be something that protects that our economy, that protects the jobs here in this country from this transfer of knowledge and transfer of jobs going overseas?

It seems to me that some of these companies are using, as part of their business plan, this particular tactic where they will have them over here for 3 years or 6 years and then move the entire operation overseas.

Mr. NEUFELD. That may well be, but in my position in—as head of the operations component within USCIS, you know, my job is to make sure that, you know, the adjudicators have the tools and the knowledge to enforce the laws and the regulations as they are written——

Mr. ROSS. I understand.

Mr. NEUFELD [continuing]. And we can't go beyond that.

Mr. ROSS. Mr. Hira, you mentioned about it. You mentioned that we need to close loopholes. Any suggestions as to how we ought to close the loopholes there?

Mr. HIRA. Specifically to this issue or——

Mr. ROSS. Yes, sir, specifically to that issue.

Mr. HIRA. I think this is something where the private companies have to protect their intellectual property. I think it is pretty difficult or I can't—right now I can't imagine a way, a good way for Government to sort of control that.

Mr. ROSS. But I mean even to the extent where companies themselves are actually probably looking at the bottom line and seeing that they can do it better with their labor costs now overseas, even though they have trained them over here. It is essentially H-1B on-the-job training——

Mr. HIRA. Yeah, and I——

Mr. ROSS [continuing]. It is going to be equitable.

Mr. HIRA.—I think one of the areas that hasn't been looked at is how offshoring is getting into Government contracting. So to what extent are U.S. government contracts being offshored. Nobody has really looked into that carefully or how H-1B's are performing, how many of them are performing, how they are performing on these types of government contracts.

Mr. ROSS. Mr. Cooper, you spoke about the prevailing wage and you indicated there are some—in most instances that the prevailing wage is here, the market wage is up here. Are there any instances where the prevailing wage is the higher wage?

Mr. COOPER. Not that I am aware of, but you couldn't pay lower than the prevailing wage. That sets the rock bottom minimum that an employer must pay.

Mr. ROSS. Right. But I am saying, if we—but in your example you said that just about everything is paid above the prevailing wage. So I guess what I am saying is what good is the prevailing wage then if the market wage is being paid?

Mr. COOPER. The rules are either pay prevailing or what you actually pay to similar workers in similar jobs, whichever is the higher. You cannot go below the prevailing wage, but you can go above, if that is what it takes to get the worker that you need. And that commonly happens either when you are trying to recruit somebody from overseas or when you are trying to recruit somebody for another worker. And on this portability issue, I mean I can tell you that we file portability or change of employer petitions for an H-1B moving from one employer to another all the time. It is appropriate——

Mr. ROSS. I appreciate that and I was just going to get back to my question.

Mr. COOPER. Sorry.

Mr. ROSS. That is okay.

Mr. Hira, you've mentioned about prevailing wages, though. And you think that there are some problems with it. And could you expound on that?

Mr. HIRA. Sure. It is really well known in the IT sector especially that the H-1B workers are cheaper. Not in all cases, there are some very highly skilled workers, but there is a competitive advantage to bringing in H-1B workers. And I am actually just trying to find the quote, but you know, there is, you know, industry experts as well as CEOs of—or executives of some of these firms who have ac-

tually admitted this, as much, that their wages are below market and that is what gives them the competitive advantage.

In my study of the offshore outsourcing industry, just looking at finances, where they have developed their competitive advantage, it is clear that they get a wage advantage, not only of doing the work offshore, but their on site labor is much cheaper.

Mr. ROSS. Do you think that this H-1B program has facilitated age discrimination?

Mr. HIRA. I think there is no doubt that there is age biases within the technology sector. And if you look at the age profile of H-1B workers they tend to be much younger than the typical worker in those particular sectors in the U.S. So it certainly enables it. Whether it definitively actually is causing that, I don't—I can't say for sure.

Mr. ROSS. Thank you. Mr. Morrison, real quick question. I note that according to the statistics we have been given the quotas for these visas have been taken up really very quickly, in some instances the first quarter of the year, one actually—the proceeding—last quarter of the first year and as late as the second quarter of the year where these visas have been given. And it seems to me that the demand is constantly increasing each year to increase the cap on the H-1B visas.

What bothers me, as a layperson and looking at this rather simply, we have got 9 percent unemployment and yet we increase the number of petitions, we reach our cap earlier and earlier. Is that indicative of a lax of educational and vocational training standards in this country?

Mr. MORRISON. Well first, the demand for H-1B's is somewhat lower right now than it was a few years ago. But the perspective of IEEE and my perspective, my testimony, is the solution is not to expand the H-1B program, the solution is to use the green card program, to expand that where—in a targeted way, for STEM workers so that we bring people permanently and we bring the right people and we give them a chance to be permanent Americans and make that kind of contribution and compete effectively with other countries that would like to have those skills. So that I think is a better answer than raising the H-1B cap.

Mr. ROSS. Thank you. I see my time is up and I yield back.

Mr. GALLEGLY. I thank the gentleman from Florida, Mr. Ross.

And at this point I yield to the gentleman from South Carolina, Mr. Gowdy.

Mr. GOWDY. Thank you, Mr. Chairman. I know reinforcement is coming up I may well find myself in Florida. I hope not, because I love South Carolina. [Laughter.]

Mr. Hira, I want to ask you about perhaps a little smaller niche which would be areas fraught with fraud or abuse within the H-1B process. Give me your top three areas that are ripe or potentially rife with abuse.

Mr. HIRA. Well, in terms of the loopholes themselves there is no what we would call labor market test. So companies can go out and bypass Americans altogether and in fact can replace Americans with H-1B workers. And this is contrary there's—to sort of conventional wisdom or popular belief. They can actually replace American workers. They can legally, right now, pay below market wages

and it is pretty clear that they have built business models around this. And there is a variety of different business models. Some are domestic where they are small job shops, but some are very large like these offshore outsourcing firms which are publicly traded and so on.

The other area where I think there needs to be a lot more scrutiny where there hasn't been is that's H-1B dependent companies. These are companies that have more than 15 percent of their employees in the U.S. on H-1B's. So if you think about that, some of these companies have 60, 70 percent of their worker force in the U.S. as guest workers, maybe even more than that, 80 percent. And we are not talking about a couple hundred, we are talking about 10,000 workers here as guest workers. They hire almost no Americans. They somehow are able to meet the extra criteria that they have go through to bypass Americans, but they are able to do that.

And let me just give you a sense of the figures. Infosys, for example, over a 3-year period got almost 10,000 H-1B workers. You know how many Americans did they hire? Probably a couple hundred.

Mr. GOWDY. With respect to violations, intended or not of either the letter or spirit of the process, are there effective investigative tools to determine whether or not the letter or spirit is being violated?

Mr. HIRA. Well I think Mr. Conyers pointed out an important problem with the Administration and that is that it is almost entirely dependent on a whistleblower. That H-1B worker, their legal status in the U.S. depends on their employment and their H-1B visa. So it is very unlikely that they are going to come out and blow the whistle. There have been a small number of cases but there is very little bit—little evidence that there is lots of these H-1B workers who are blowing the whistle, even though they are being adversely affected.

Mr. GOWDY. Are there sufficient investigative tools once the whistle has been blown? For instance, subpoena power?

Mr. HIRA. I don't know enough about that. So——

Mr. GOWDY. Mr. Cooper, do you know whether or not the Department of Labor has subpoena power with respect to employers?

Mr. COOPER. There is no specific subpoena power in the statute but they can and they do very often go out and do wage and hour investigations, make sure that people are being paid the wage they are supposed to. And they have got significant enforcement authority. For instance——

Mr. GOWDY. When you say significant, I am a prosecutor so jail is significant to me.

Mr. COOPER. Well——

Mr. GOWDY. What are the potential consequences for an investigation that doesn't turn out well for the employer?

Mr. COOPER. Well, here is one that would frighten an employer, short of jail. If an employer is found to have willfully underpaid an H-1B and if that takes place in the context of a displacement of a U.S. worker, they can be fined in the tens of thousands of dollars, but more important, they can be kicked out of the system, no one H-1B's for 3 years.

Mr. GOWDY. Is there subpoena power to investigative claims such as that?

Mr. COOPER. There is investigative but not subpoena power, if I am not mistaken.

Mr. GOWDY. But what power would you say is tantamount to subpoena power?

Mr. COOPER. Oh, I am sorry, wage and hour investigators can and they do go into employer's workplaces and they can—you know——

Mr. GOWDY. They can——

Mr. COOPER [continuing]. There they can see records and so forth.

Mr. GOWDY. So they have full access to all the records, even absent administrative or legal subpoena power?

Mr. COOPER. That is my understanding. I mean I can tell you our firm does—you know, they do these wage and hour investigations of employers of the H-1B program.

Mr. GOWDY. Your firm does?

Mr. COOPER. Our firm has represented employers who have been the subject of these.

Mr. GOWDY. Does the investigative agency have the full panaplea of investigative tools that the bureau or other Federal agencies would have?

Mr. COOPER. I don't know about the comparison but they can certainly see the things that would help them—would—that they need to know to make that evaluation. They can see payroll records, they can see what—they can find out what the employer is actually doing, they can access that against what the required wage level should be and so forth.

Mr. GOWDY. What is the definition of willful? You said a willful violation.

Mr. COOPER. It is basically on purpose, knowing, you know, knowing that you should have done otherwise.

Mr. GOWDY. The fact that you did it last week and are doing it again this week, would that be tantamount to willful?

Mr. COOPER. I think that would help indicate.

Mr. GOWDY. All right. Thanks.

Mr. GALLEGLY. I thank the gentleman from South Carolina.

I thank all of our witnesses this morning. Welcome back Bruce, you are always welcome. And with that the Subcommittee stands adjourned.

[Whereupon, at 11:52 a.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Statement Submitted for the Record

by

HR POLICY ASSOCIATION

Before the

House Judiciary Subcommittee on Immigration Policy and Enforcement

Hearing on

H-1B Visas: Designing a Program to Meet the Needs of the U.S. Economy and U.S. Workers

MARCH 31, 2011

MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE:

Thank you for this opportunity to present HR Policy Association's views on designing a skilled worker visa program to meet the needs of the U.S. economy and U.S. workers. The Association consists of the chief human resource officers of more than 300 large employers doing business in the United States. Collectively, HR Policy members employ over ten million employees which is nearly nine percent of the private sector workforce. Representing every major economic sector, one of HR Policy's principal missions is to ensure that laws and policies affecting employment relations are sound, practical, and responsive to the realities of the workplace. The ability of our member companies to retain and add jobs in the United States is heavily dependent upon a workforce with the skills and expertise needed to perform the work and the immigration system has a substantial impact on that ability. We applaud your Subcommittee for holding a hearing on this critical issue.

The United States remains a magnet for many talented individuals from overseas. Many already have skills that are in short supply; others come to the United States to acquire them through a higher education system that continues to be highly coveted by the rest of the world. When the United States turns away foreign professionals, or sends promising graduates home, it does itself a grievous disservice. Global companies will pursue talent regardless of where it is physically located. The key question for the United States is whether it wants that talent employed here or in the nation of one of its global competitors.

We are concerned that the U.S. debate over immigration reform often fails to place immigration policy in the broader context of education and competitiveness policy, particularly when it comes to meeting America's needs for greater talent in the fields of science, technology, engineering, and mathematics (STEM). Unfortunately, in recent decades, policymakers have proved largely unable to adjust immigration rules to admit the manpower that U.S. companies require to grow.

America Is Attracting Top Talent, But Not Retaining It

From the beginning of its history, the United States' economic dynamism has depended on its technological prowess and gift for innovation. What makes the challenge more daunting in the new century is that nations around the globe are now aggressively competing for the best and brightest. Clearly, America can regain its edge only if it remains open to foreign talent, attracting and retaining both science students and mature scientists. And yet, despite this clear imperative, America seems to be moving in the exact opposite direction. Restrictive quotas limit the number of skilled immigrants admitted each year. Misconceived policies and burdensome, bureaucratic rules constrain where and how they can work. Instead, the U.S. should actively work toward retaining the foreign scientists we have educated just as they are reaching their most productive years.

By paying insufficient attention to the economic forces that drive immigration, the system currently restricts the entry of foreign workers and the duration of their stay, while failing to allow for changes in the marketplace; *i.e.*, shifts in U.S. labor supply and demand, or the increasingly integrated nature of global labor markets. Because of the way immigration ceilings are set—in most cases, only Congress can tweak the quota—American immigration policy is largely unable to adjust to market realities, and most of its annual ceilings have remained unchanged for 20 years through all the churning fluctuations of the world economy.

America Is Losing Innovative Talent By Forcing Exceptional Foreign Students To Leave the Country Once They Graduate From American Institutions of Higher Learning

The immigration system often views newcomers as inert widgets, not dynamic human beings—failing to recognize that people may come to the U.S. for one reason but stay for another, defying the categories—"permanent" and "temporary"—that structure the part of the immigration system that is employment-based. When it comes to the critical STEM disciplines, this creates two severe problems—one involving foreign students, the other involving workers who travel to the U.S. through an employment-based visa.

American colleges are more popular than ever with international students. The number of foreign students attending colleges in the United States climbed for the third straight year, according to the Institute of International Education. Roughly 671,600 international students attended colleges and universities in America during the 2008-2009 school year, with first-year enrollment rising almost 16 percent. Moreover, more than half of the science and engineering graduate students in U.S. universities are from outside the country. Roughly 24% of all college-educated workers in science and engineering occupations are foreign born, and that number rises to 40% for doctorate holders in these same fields. In comparison, the current H1-B visa cap for temporary foreign workers in specialty occupations is 65,000, and each year the limit is reached within a few months of the start of the new fiscal year.[1]

Even if global competition were not a factor, it would still make sense for the United States to do everything possible to entice foreign students to stay on after graduation, because key American industries are in desperate need of more trained and talented workers. But instead of welcoming them with a path to citizenship or even permanent residence, America makes it hard for foreign students to get visas and then limits where they can work. As of now, the only avenue open to most graduating foreign students is a temporary H-1B visa, which leads to another major concern.

Business Is Now Conducted Globally, But the American Visa Process Frustrates Companies Trying To Deploy and Retain Talented Foreign Professionals

Similar to the situation facing foreign students, American immigration policy also results in the loss of talented professionals who have already begun their careers. Many come to the U.S. with a temporary H-1B visa. Issued for three years and renewable once in many if not most cases, the H-1B is an indispensable tool for employers of highly-skilled workers—more easily and quickly obtained than a permanent visa, or green card. But an H-1B is not always the best answer—in some companies and some personal circumstances, a permanent visa would be more appropriate. However, because employment-based green cards are in such short supply, the H-1B is often used with the hopes of it becoming a stepping stone toward a permanent visa. Unfortunately, highly skilled workers find themselves caught in a holding pattern, facing hurdles in seeking to work for another employer other than the one who sponsored them, unable in many if not most cases to change jobs or even move up the ladder as long as the visa lasts. This rigidity hurts employers and employees alike, undermining the productivity of these knowledge workers and the positive effect that they could have on our economy, while also reducing the United States' appeal to highly desirable skilled workers who are being enticed to locate elsewhere.

At the heart of the problem is a fundamental, structural mismatch between the size of existing temporary programs, including but not limited to H-1B, and the number of permanent visas, or green cards, available for employment-based immigrants with college degrees. The number of temporary visas issued to skilled workers—H-1B, TN, O and L-1 combined—is nearly 300,000 annually. Yet America still grants only 140,000 employment-based green cards a year.

The persistent shortfall has created huge backlogs—in some cases the wait for a permanent visa is as long as a decade. The H-1B visa holders America should be wooing cling desperately to their temporary status while they wait for permanent residence. In the meantime, it is difficult for them to change jobs, and it is hard for their employers to promote or assign them more productively. Their spouses cannot work, and they often remain hesitant to put down roots, buying homes or investing in the United States. It is a classic lose-lose—unwelcoming and economically inefficient, bad for U.S. employers and foreign talent alike. The only people who benefit are America's global competitors.

American Immigration Policy Is Becoming Even More Restrictive, Building Barriers to Keep Highly Talented Individuals From Entering the Country

For more than 20 years, Congress has proved unable or unwilling to expand the number of available employment-based green cards, and this constricted pipeline simply can no longer accommodate the increased flow running through the easier to use and ever more popular temporary programs. And yet, despite the backlogs, the bottlenecks, and the waste of highly sought global talent, there is no relief in sight.

If anything, policymakers in recent years have been more inclined to impose further encumbrances on existing worker visa programs that make them still less hospitable to foreign workers. The problems start on the ground where would-be employers and employees are finding immigration officials and policies increasingly less friendly. Agencies adjudicating visas have become not just increasingly strict, but also capricious. Applications of a kind routinely granted in the past are now being routinely denied. Even workers already issued visas are finding it difficult to renew them under the new, arbitrary standards. Similar and even more threatening changes are occurring at the regulatory level: the Departments of Labor and Homeland Security are rewriting the rules for existing temporary worker visa programs and, invariably in the past two years, making them harder to use.

Meanwhile, the viability of these programs is being threatened by a number of proposals that may be considered by Congress. In the past, these proposals have included arbitrary caps on the number of foreign workers an employer can sponsor, restrictions on how and where they can work, and an array of other costs that will price temporary visas out of reach for many employers. Even proposals for comprehensive reform, generally seen as bringing relief for business, contain a buried threat: the current broken system would be replaced with an appointed commission, politically unaccountable and more than likely hostile to the free market, which would set visa quotas and recommend how programs work.

Ultimately, what is needed is an immigration policy that harnesses rather than hides from or tries to block the dynamism of the new global economy—a policy designed to serve U.S. economic interests and one that allows market mechanisms, not politics as usual, to determine what those interests are.

Specific Recommendations

1. **The immigration reform debate should address the reality that the United States is in intense competition with the rest of the globe for attracting and retaining the human capital essential to a culture of productivity and innovation.**

Typically, the highly charged immigration debate is dominated by social and moral issues. Yet, the critical question that must be addressed is whether or not the immigration system is helping American employers regain the edge against global competition. The U.S. can only do this by attracting and retaining the kind of human capital that spurs technological change, enhances productivity, launches businesses big and small, and sustains the American culture of innovation.

As was noted in a 2010 report by the World Economic Forum entitled *Stimulating Economies Through Fostering Mobility*:

> Countries need to prepare to face the challenges of demographic shifts and a fast-changing labor market environment by defining adequate education and migration policies…to prepare for the era of extreme labor scarcity, significant talent mobility and a truly global workforce.[2]

As other countries wake up to this fact, so should the United States.

2. **It is imperative that the United States avoid enacting new legislation or issuing new regulations that impose additional restrictions on visas that would only further dampen economic recovery.**

In view of some of the pending proposals, as bad as current policy is, it would be better if Congress did nothing. Among the legislative measures we believe should be resisted are those that would impose additional impediments on the issuance of employment visas, including not only H-1B visas but also those issued under the L-1 program, which allows companies operating in the U.S. and abroad to temporarily transfer employees from a foreign location to a U.S. worksite. We are particularly concerned about any proposals that may seek to cap the L-1 program, or impose location and unrealistic compensation restrictions on L-1 employees.

3. **Foreign students who acquire advanced degrees in the STEM disciplines at American higher education institutions should have a path to U.S. citizenship if they wish to use their talents here rather than returning to their country of origin.**

As President Obama stated in his 2011 State of the Union Address, "it makes no sense" that, as soon as foreign students obtain advanced degrees at U.S. higher education institutions, "we send them back home to compete against us." This situation should be remedied by passing H.R. 399, the Stopping Trained in America Ph.D.s From Leaving the Economy Act of 2011 (STAPLE)—which would authorize permanent residency for foreign students receiving advanced STEM degrees in the U.S. and exempting them from numerical limitations on H-1B visas. We strongly support this legislation.

4. **The system for determining the number of annual visas should be revamped to better reflect the needs of the market, rather than maintaining arbitrary and inflexible caps.**

Employers, not the government, have the best sense of which workers they need for their businesses. No government agency is capable of determining the attributes needed to fill the many, varied and constantly changing jobs in the U.S. economy. As the diminished immigrant influx of recent years demonstrates, the global labor market corrects itself when times are tough and works efficiently to regulate the flow of workers seeking to enter the country. Arbitrary, inflexible caps only impede this self-adjusting flow, to the detriment of the economy. The current system should be replaced by one that is more demand-driven, reflecting the actual skill needs that employers are facing, while maintaining protections against U.S. workers with those skills being displaced.

5. **A more flexible system should be established to maintain options for both short-term and long-term residence, allowing professionals to transition from temporary to permanent status after a period of contributing to the American economy, without regard to quotas or nationality.**

Two decades of debate about visas for highly skilled workers have driven home a critical lesson: the more flexible the system is, the better it will work. Not all newcomers want to stay permanently. Many come initially on a temporary basis to meet short- to medium-term labor needs. Some then decide to go home—generally to the benefit of their home countries—while others end up staying permanently in the U.S. and earning legal permanent residence. A rational immigration system would permit both options, providing flexibility for immigrants and employers alike.

We appreciate the opportunity to present our views and recommendations and hope we can work closely with your Subcommittee to accomplish the goal of aligning immigration policy with the workforce needs of U.S. employers to ensure economic growth.

---

[1] Dr. Martha Kanter, Under Secretary, U.S. Department of Education, *Meeting Our 21st Century STEM Education Challenges*, Remarks delivered to the Council of Scientific Society Presidents (CSSP) (December 3, 2010).

[2] World Economic Forum in partnership with Boston Consulting Group, Stimulating Economies through Fostering Talent Mobility 7-8 (2010), available at http://www3.weforum.org/docs/WEF_PS_TalentMobility_report_2010.pdf.

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Immigration Policy and Enforcement, Committee on the Judiciary, House of Representatives

For Release on Delivery
Expected at 10:00 a.m. EDT
Thursday, March 31, 2011

H-1B VISA PROGRAM

Multifaceted Challenges Warrant Re-examination of Key Provisions

Statement for the Record by Andrew Sherrill, Director
Education, Workforce, and Income Security

GAO-11-505T

Mr. Chairman and Members of the Subcommittee:

We are pleased to have the opportunity to comment on the H-1B program.

Congress created the current H-1B program in 1990 to enable U.S. employers to hire temporary, foreign workers in specialty occupations. The law capped the number of H-1B visas issued per fiscal year at 65,000, although the cap has fluctuated over time with legislative changes. The H-1B cap and the program itself have been a subject of continued controversy. Proponents of the program argue that it allows companies to fill important and growing gaps in the supply of U.S. workers, especially in the science and technology fields. Opponents of the program argue that there is no skill shortage and that the H-1B program displaces U.S. workers and undercuts their pay. Others argue that the eligibility criteria for the H-1B visa should be revised to better target foreign nationals whose skills are undersupplied in the domestic workforce.

Our comments in this statement for the record are based on the results of our recent examination of the H-1B program, highlighting the key challenges it presents for H-1B employers, H-1B and U.S. workers, and federal agencies.[1] Specifically, this statement presents information on (1) employer demand for H-1B workers; (2) how the H-1B cap impacts employers' costs and whether they move operations overseas; (3) the government's ability to track the cap and H-1B workers over time; and (4) how well the provisions of the H-1B program protect U.S. workers. A detailed explanation of our methodology can be found in our report. Our work was conducted from May 2009 through January 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provided a reasonable basis for our findings and conclusions based on our audit objectives.

Summary

From 2000 to 2009, the demand for new H-1B workers tended to exceed the cap, as measured by the numbers of initial petitions submitted by employers who are subject to the cap. While the majority (68 percent) of

[1]See GAO, *H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program*, GAO-11-26 (Washington, D.C.: Jan. 14, 2011).

employers were approved for one H-1B worker, demand was driven to a great extent by a small number (fewer than 1 percent) of H-1B employers garnering over one quarter of all H-1B approvals.[2] Cap-exempt employers, such as universities and research institutions, submitted over 14 percent of the initial petitions filed during this period.

Most of the 34 H-1B employers GAO interviewed reported that the H-1B program and cap created additional costs for them, such as delays in hiring and projects, but said the global marketplace and access to skilled labor—not the cap—drive their decisions on whether to move activities overseas.

Limitations in agency data and systems hinder tracking the cap and H-1B workers over time. For example, data systems among the various agencies that process these individuals are not linked so it is difficult to track H-1B workers as they move through the immigration system. System limitations also prevent the Department of Homeland Security from knowing precisely when and whether the annual cap has been reached each year.

Provisions of the H-1B program that could serve to protect U.S. workers—such as the requirement to pay prevailing wages, the visa's temporary status, and the cap itself—are weakened by several factors. First, program oversight is fragmented between four agencies and restricted by law. Second, the H-1B program lacks a legal provision for holding employers accountable to program requirements when they obtain H-1B workers through a staffing company—a company that contracts out H-1B workers to other companies. Third, statutory changes made to the H-1B program over time—i.e. that broadened job and skill categories for H-1B eligibility, increased exceptions to the cap, and allowed unlimited H-1B visa extensions while holders applied for permanent residency—have in effect increased the pool of H-1B workers beyond the cap and lowered the bar for eligibility.

Background

The H-1B program enables companies in the United States to hire foreign workers for work in specialty occupations on a temporary basis. A specialty occupation is defined as one requiring theoretical and practical

[2]Over the 10-year period, about 91 percent of all submitted petitions (initial and extensions) were approved.

application of a body of highly specialized knowledge and the attainment of a bachelor's degree or higher (or its equivalent) in the field of specialty.

The law originally capped the number of H-1B visas at 65,000 per year; the cap was raised twice pursuant to legislation,[3] but in fiscal year 2004, the cap reverted to its original level of 65,000. Statutory changes also allowed for certain categories of individuals and companies to be exempt from or to receive special treatment under the cap. The American Competitiveness in the Twenty-First Century Act of 2000 exempted from the cap all individuals being hired by institutions of higher education and also nonprofit and government-research organizations. More recently, the H-1B Visa Reform Act of 2004 allowed for an additional 20,000 visas each year for foreign workers holding a master's degree or higher from an American institution of higher education to be exempted from the numerical cap limitation. In 2004, consistent with free trade agreements, up to 6,800 of the 65,000 H-1B visas may be set aside for workers from Chile and Singapore.[4]

While the H-1B visa is not considered a permanent visa, H-1B workers can apply for extensions and pursue permanent residence in the United States. Initial petitions are those filed for a foreign national's first-time employment as an H-1B worker and are valid for a period of up to 3 years. Generally, initial petitions are counted against the annual cap. Extensions—technically referred to as continuing employment petitions—may be filed to extend the initial petitions for up to an additional 3 years. Extensions do not count against the cap. While working under an H-1B visa, a worker may apply for legal permanent residence in the United States. After filing an application for permanent residence, H-1B workers are generally eligible to obtain additional 1-year visa extensions until their U.S. Permanent Resident Cards, commonly referred to as "green cards," are issued.

The Departments of Labor (Labor), Homeland Security (Homeland Security), and State (State) each play a role in administering the

[3]The cap was increased to 115,000 for fiscal years 1999 and 2000 by the American Competitiveness and Workforce Improvement Act of 1998 and to 195,000 for fiscal years 2001 through 2003 by the American Competitiveness in the Twenty-First Century Act of 2000.

[4]For more information about key H-1B laws and related provisions, please refer to appendix V of GAO-11-26.

application process for an H-1B visa. Labor's Employment and Training Administration (Employment and Training) receives and approves an initial application, known as the Labor Condition Application (LCA), from employers. The LCA, which Labor reviews as part of the application process, requires employers to make various attestations designed to protect the jobs of domestic workers and the rights and working conditions of temporary workers. Homeland Security's U.S. Citizenship and Immigration Services (USCIS) reviews an additional employer application, known as the I-129 petition, and ultimately approves H-1B visa petitions. For prospective H-1B workers residing outside the United States, State interviews approved applicants and compares information obtained during the interview against each individual's visa application and supporting documents, and ultimately issues the visa. For prospective H-1B workers already residing in the United States, USCIS updates the workers' visa status without involvement from State.

USCIS has primary responsibility for administering the H-1B cap. Generally, it accepts H-1B petitions in the order in which they are received. However, for those years in which USCIS anticipates that the number of I-129 petitions filed will exceed the cap, USCIS holds a "lottery" to determine which of the petitions will be accepted for review. For the lottery, USCIS uses a computer-generated random selection process to select the number of petitions necessary to reach the cap.

With regard to enforcement, Labor, the Department of Justice (Justice), and Homeland Security each have specific responsibilities. Labor's Wage and Hour Division (Wage and Hour) is responsible for enforcing program rules by investigating complaints made against employers by H-1B workers or their representatives and assessing penalties when employers are not in compliance with the requirements of the program. Justice is responsible for investigating complaints made by U.S. workers who allege that they have been displaced or otherwise harmed by the H-1B visa program. Finally, USCIS's Directorate of Fraud Detection and National Security (FDNS) collaborates with its Immigration and Customs Enforcement Office to investigate fraud and abuse in the program.

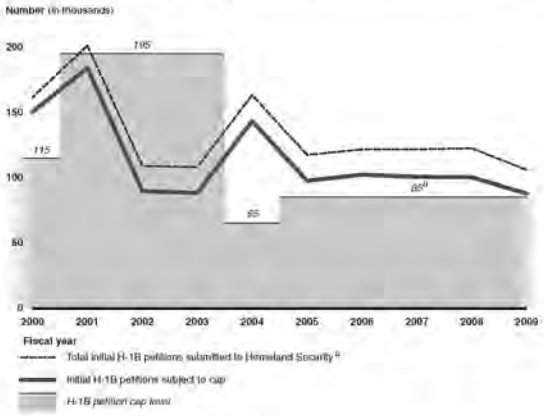
Demand for H-1B Workers Exceeded the Cap in Most Years and Was Driven by a Small Number of Employers

Over the past decade, demand for H-1B workers tended to exceed the cap, as measured by the number of initial petitions submitted by employers, one of several proxies used to measure demand since a precise measure does not exist.[5] As shown in figure 1, from 2000 to 2009, initial petitions for new H-1B workers submitted by employers who are subject to the cap exceeded the cap in all but 3 fiscal years. However, the number of initial petitions subject to the cap is likely to be an underestimate of demand since, once the cap has been reached, employers subject to the cap may stop submitting petitions and Homeland Security stops accepting petitions.

If initial petitions submitted by employers exempt from the cap are also included in this measure (also shown in figure 1), the demand for new H-1B workers is even higher, since over 14 percent of all initial petitions across the decade were submitted by employers who are not subject to the cap. In addition to initial requests for H-1B workers, employers requested an average of 148,000 visa extensions per year, for an average of over 280,000 annual requests for H-1B workers.

[5]We analyzed other proxies for demand including the number of employers submitting petitions for H-1B workers, the time it takes to reach the cap, and requests for high-skilled workers via other visa programs; however, none of these measures allowed us to provide a precise measure of demand. See GAO-11-26 for more detailed information on these indicators of demand.

Figure 1: Number of Initial Petitions for New H-1B Workers Submitted by Employers Relative to the Cap, FY 2000-FY 2009



Source: GAO analysis of Homeland Security CLAIMS 3 data.

[a]Includes 20,000 visas allocated to workers graduating from U.S. master's programs or higher.

[b]Total initial petitions submitted to USCIS includes all initial petitions that were entered into its data system, including those from cap-exempt employers. Reported numbers only reflect petitions entered into USCIS's Computer Linked Application and Management System, Version 3 (CLAIMS 3) data system and processed by USCIS, not the total number submitted, which is likely higher in years when the cap is reached. Petitions submitted under the master's cap cannot be differentiated and are therefore included in these data.

Over the decade, the majority (over 68 percent) of employers were approved to hire only one H-1B worker, while fewer than 1 percent of employers were approved to hire almost 30 percent of all H-1B workers. Among these latter employers are those that function as "staffing companies" that contract out H-1B workers to other companies.[9] The prevalence of such companies participating in the H-1B visa program is

[9]Staffing companies, many of which also outsource work overseas, may place H-1B workers at the worksites of other employers as part of their business model.

difficult to determine. There are no disclosure requirements and Homeland Security does not track such information. However, using publicly available data, we learned that at least 10 of the top 85 H-1B-hiring employers in fiscal year 2009 participated in staffing arrangements, of which at least 6 have headquarters or operations located in India. Together, in fiscal year 2009, these 10 employers garnered nearly 11,456 approvals, or about 6 percent of all H-1B approvals. Further, 3 of these employers were among the top 5 H-1B-hiring companies, receiving 8,431 approvals among them.

Most Interviewed Companies Said the H-1B Cap Was Not a Key Factor in Their Decisions to Move Operations Overseas but Cited Other Program Burdens

To better understand the impact of the H-1B program and cap on H-1B employers, GAO spoke with 34 companies across a range of industries about how the H-1B program affects their research and development (R&D) activities, their decisions about whether to locate work overseas, and their costs of doing business.[7] Although several firms reported that their H-1B workers were essential to conducting R&D within the U.S., most companies we interviewed said that the H-1B cap had little effect on their R&D or decisions to locate work offshore. Instead, they cited other reasons to expand overseas including access to pools of skilled labor abroad, the pursuit of new markets, the cost of labor, access to a workforce in a variety of time zones, language and culture, and tax law. The exception to this came from executives at some information technology services companies, two of which rely heavily on the H-1B program. Some of these executives reported that they had either opened an offshore location to access labor from overseas or were considering doing so as result of the H-1B cap or changes in the administration of the H-1B program.

Many employers we interviewed cited costs and burdens associated with the H-1B cap and program. The majority of the firms we spoke with had H-1B petitions denied due to the cap in years when the cap was reached early in the filing season. In these years, the firms did not know which, if any, of their H-1B candidates would obtain a visa, and several firms said that this created uncertainty that interfered with both project planning and candidate recruitment. In these instances, most large firms we interviewed

[7]GAO interviewed 34 companies—including individual structured interviews with 31 companies and group discussions with 3 companies. The selection of 31 firms constitutes a nongeneralizable sample and cannot be used to make inferences beyond the specific 31 firms selected. See appendix I of GAO-11-26 for more information on our focus groups and individual interviews.

reported finding other (sometimes more costly) ways to hire their preferred job candidates. For example, several large firms we spoke with were able to hire their preferred candidates in an overseas office temporarily, later bringing the candidate into the United States, sometimes on a different type of visa. On the other hand, small firms were sometimes unable to afford these options, and were more likely to fill their positions with different candidates, which they said resulted in delays and sometimes economic losses, particularly for firms in rapidly changing technology fields.

Interviewed employers also cited costs with the adjudication and lottery process and suggested a variety of reforms:

- The majority of the 34 firms we spoke with maintained that the review and adjudication process had become increasingly burdensome in recent years, citing large amounts of paperwork required as part of the adjudication process. Some experts we interviewed suggested that to minimize paperwork and costs, USCIS should create a risk-based adjudication process that would permit employers with a strong track-record of regulatory compliance in the H-1B program to access a streamlined process for petition approval.

- In addition, several industry representatives told us that because the lottery process does not allow employers to rank their top choices, firms do not necessarily receive approval for the most desired H-1B candidates. Some experts suggested revising the system to permit employers to rank their applications so that they are able to hire the best qualified worker for the job in highest need.

- Finally, entrepreneurs and venture capital firms we interviewed said that program rules can inhibit many emerging technology companies and other small firms from using the H-1B program to bring in the talent they need, constraining the ability of these companies to grow and innovate in the United States. Some suggested that, to promote the ability of entrepreneurs to start businesses in the United States, Congress should consider creating a visa category for entrepreneurs, available to persons with U.S. venture backing.

In our report, we recommended that USCIS should, to the extent permitted by its existing statutory authority, explore options for increasing the flexibility of the application process for H-1B employers. In commenting on our report, Homeland Security and Labor officials expressed reservations about the feasibility of our suggested options, but

Homeland Security officials also noted efforts under way to streamline the application process for prospective H-1B employers. For example, Homeland Security is currently testing a system to obtain and update some company data directly from a private data vendor, which could reduce the filing burden on H-1B petitioners in the future. In addition, Homeland Security recently proposed a rule that would provide for employers to register and learn whether they will be eligible to file petitions with USCIS prior to filing an LCA, which could reduce workloads for Labor and reduce some filing burden for companies.[8]

Limitations in Agency Data and Systems Hinder Tracking the Cap and H-1B Workers Over Time

The total number of H-1B workers in the United States at any one point in time—and information about the length of their stay—is unknown due to data and system limitations. First, data systems among the various agencies that process H-1B applications are not easily linked, which makes it impossible to track individuals as they move through the application and entry process. Second, H-1B workers are not assigned a unique identifier that would allow agencies to track them over time or across agency databases—particularly if and when their visa status changes. Consequently, USCIS is not able to track the H-1B population with regard to: (1) how many approved H-1B workers living abroad have actually received an H-1B visa and/or ultimately entered the country; (2) whether and when H-1B workers have applied for or were granted legal permanent residency, leave the country, or remain in the country on an expired visa; and (3) the number of H-1B workers currently in the country or who have converted to legal permanent residency.

Limitations in USCIS's ability to track H-1B applications also hinder it from knowing precisely when and whether the annual cap has been reached each year—although the Immigration and Nationality Act requires the department to do so.[9] According to USCIS officials, its current processes do not allow them to determine precisely when the cap on initial petitions is reached. To deal with this problem, USCIS estimates when the number of approvals has reached the statutory limit and stops accepting new petitions.

Although USCIS is taking steps to improve its tracking of approved petitions and of the H-1B workforce, progress has been slow to date.

[8]Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Aliens Subject to the Numerical Limitations, 76 Fed Reg. 11,686, 11,698-11,689 (Mar. 3, 2011).

[9]8 U.S.C. § 1184(g).

Through its "Transformation Program," USCIS is developing an electronic I-129 application system and is working with other agencies to create a cross-reference table of agency identifiers for individuals applying for visas that would serve as a unique person-centric identifier.[10] When this occurs, it will be possible to identify who is in the United States at any one point in time under any and all visa programs. However, the agency faces challenges with finalizing and implementing the Transformation Program.[11] We recommended that Homeland Security, through its Transformation Program, take steps to (1) ensure that linkages to State's tracking system will provide Homeland Security with timely access to data on visa issuances, and (2) that mechanisms for tracking petitions and visas against the cap be incorporated into business rules to be developed for USCIS's new electronic petition system.[12]

While a complete picture of the H-1B workforce is lacking, data on approved H-1B workers provides some information about the H-1B workforce. Between fiscal year 2000 and fiscal year 2009, the top four countries of birth for approved H-1B workers (i.e., approved initial and extension petitions from employers both subject to the cap and cap-exempt) were India, China, Canada, and the Philippines. Over 40 percent of all such workers were for positions in system analysis and programming. As compared to fiscal year 2000, in fiscal year 2009, approved H-1B workers were more likely to be living in the United States than abroad at the time of their initial application, to have an advanced degree, and to have obtained their graduate degrees in the United States. Finally, data on a cohort of approved H-1B workers whose petitions were submitted between January 2004 and September 2007, indicate that at least 18 percent of these workers subsequently applied for permanent

[10]The "Transformation Program" is a multiprogram, multiyear effort to modernize business processes and information systems.

[11]For more information on these challenges, see GAO, *Homeland Security: Despite Progress, DHS Continues to Be Challenged in Managing Its Multi-Billion Dollar Annual Investment in Large-Scale Information Technology Systems*, GAO-09-1002T (Washington, D.C.: Sept.15, 2009).

[12]See GAO-11-26 for complete information on our recommendations, matters for Congressional consideration, and comments we received from the agencies involved in the H-1B program.

residence in the United States—for which about half were approved, 45 percent were pending, and 3 percent were denied by 2010.[18]

Restricted Agency Oversight and Statutory Changes Weaken Protections for U.S. Workers

The provisions of the H-1B program designed to protect U.S. workers—such as the requirement to pay prevailing wages, the visa's temporary status, and the cap on the number of visas issued—are weakened by several factors.

First, H-1B program oversight is shared by four federal agencies and their roles and abilities to coordinate are restricted by law. As a result, there is only nominal sharing of the kind of information that would allow for better employer screening or more active and targeted pursuit of program abuses. For example, the review of employer applications for H-1B workers is divided between Labor and USCIS, and the thoroughness of both these reviews is constrained by law. In reviewing the employer's LCA, Labor is restricted to looking for missing information and obvious inaccuracies, such as an employer's failure to checkmark all required boxes on a form denoting compliance. USCIS's review of the visa petition, the I-129, is not informed by any information that Labor's Employment and Training Administration may possess on suspicious or problematic employers. With regard to enforcement of the H-1B worker protections, Wage and Hour investigations are constrained, first, by the fact that its investigators do not receive from USCIS any information regarding suspicious or problematic employers. They also do not have access to the Employment and Training's database of employer LCAs. Second, in contrast to its authority with respect to other labor protection programs, Wage and Hour lacks subpoena authority to obtain employer records for H-1B cases. According to investigators, it can take months, therefore, to pursue time-sensitive investigations when an employer is not cooperative.

To improve Labor's oversight over the H-1B program, we recommended that its Employment and Training Administration grant Wage and Hour searchable access to the LCA database. Further, we asked Congress to consider granting Labor subpoena power to obtain employer records during investigations under the H-1B program. To reduce duplication and

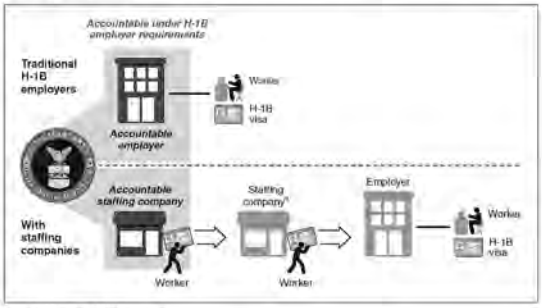
[18]This cohort includes workers whose approved petitions (initial petitions from employers both subject to the cap and cap-exempt) were submitted between Jan. 1, 2004, and Sept. 30, 2007. Of the 311,847 approved petitions reviewed, we were able to obtain unique matches with US-VISIT data for only 169,349 petitions. Of these, we determined that 56,454 (18 percent of 311,847) submitted a petition for permanent residence by 2010.

fragmentation in the administration and oversight of the application process, consistent with past GAO matters for Congressional consideration, we asked Congress to consider streamlining the H-1B approval process by eliminating the separate requirement that employers first submit an LCA to Labor for review and certification, since another agency (USCIS) subsequently conducts a similar review of the LCA.[14]

Another factor that weakens protection for U.S. workers is the fact that the H-1B program lacks a legal provision to hold employers accountable to program requirements when they obtain H-1B workers through staffing companies. As previously noted, staffing companies contract H-1B workers out to other employers. At times, those employers may contract the H-1B worker out again, creating multiple middlemen, according to Wage and Hour officials (see fig. 2). They explained that the contractual relationship, however, does not transfer the obligations of the contractor for worker protection to subsequent employers. Wage and Hour investigators reported that a large number of the complaints they receive about H-1B employers were related to the activities of staffing companies. Investigators from the Northeast region—the region that receives the highest number of H-1B complaints—said that nearly all of the complaints they receive involve staffing companies and that the number of complaints are growing. H-1B worker complaints about these companies frequently pertained to unpaid "benching"—when a staffing company does not have a job placement for the H-1B worker and does not pay them. In January 2010, Homeland Security issued a memo—commonly referred to as the "Neufeld Memo"—on determining when there is a valid employer-employee relationship between a staffing company and an H-1B worker for whom it has obtained a visa; however officials indicated that it is too early to know if the memo has improved program compliance. To help ensure the full protection of H-1B workers employed through staffing companies, in our report we asked that Congress consider holding the employer where an H-1B visa holder performs work accountable for meeting program requirements to the same extent as the employer that submitted the LCA form.

[14]To further improve oversight as well as transparency of H-1B program requirements, we also recommended that Labor require businesses to post notice of the intent to hire H-1B workers on a centralized Web site accessible to the public—similar to other temporary visa programs.

Figure 2: Limited Accountability for Employers Hiring H-1B Workers through Staffing Companies



Source: GAO review of Labor information.

[1]In some cases there may be more than one staffing company involved in placing the H-1B worker.

Finally, changes to program legislation have diluted program provisions for protecting U.S. workers by allowing visa holders to seek permanent residency, broadening the job and skill categories for H-1B eligibility, and establishing exemptions to the cap. The Immigration Act of 1990 removed the requirement that H-1B visa applicants have a residence in a foreign country that they have no intention of abandoning. Consequently, H-1B workers are able to pursue permanent residency in the United States and remain in the country for an unlimited period of time while their residency application is pending. The same law also broadened the job and skill categories for which employers could seek H-1B visas. Labor's LCA data show that between June 2009 and July 2010, over 50 percent of the wage levels reported on approved LCAs were categorized as entry-level (i.e. paid the lowest prevailing wage levels). However, such data do not, by themselves, indicate whether these H-1B workers were generally less skilled than their U.S. counterparts, or whether they were younger or more likely to accept lower wages. Finally, exemptions to the H-1B cap have increased the number of H-1B workers beyond the cap. For example, 87,519 workers in 2009 were approved for visas (including both initial and extensions) to work for 6,034 cap-exempt companies.

Conclusions

Taken together, the multifaceted challenges identified in our work show that the H-1B program, as currently structured, may not be used to its full potential and may be detrimental in some cases. Although we have recommended steps that executive agencies overseeing the program may take to improve tracking, administration, and enforcement, the data we present raise difficult policy questions about key program provisions that are beyond the jurisdiction of these agencies.

The H-1B program presents a difficult challenge in balancing the need for high-skilled foreign labor with sufficient protections for U.S. workers. As Congress considers immigration reform in consultation with diverse stakeholders and experts—and while Homeland Security moves forward with its modernization efforts—this is an opportune time to re-examine the merits and shortcomings of key program provisions and make appropriate changes as needed. Such a review may include, but would not necessarily be limited to

- the qualifications required for workers eligible under the H-1B program,
- exemptions from the cap,
- the appropriateness of H-1B hiring by staffing companies,
- the level of the cap, and
- the role the program should play in the U.S. immigration system in relationship to permanent residency.

GAO Contact and Staff Acknowledgments

If you or your staffs have any questions about this statement, please contact Andrew Sherrill at (202) 512-7215 or sherrilla@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement.

In addition to Andrew Sherrill (Director), Michele Grgich (Assistant Director) and Erin Godtland (Economist-in-Charge) led this engagement with writing and technical assistance from Nisha Hazra, Melissa Jaynes, Jennifer McDonald, Susan Bernstein (Education, Workforce and Income Security); and Rhiannon Patterson (Applied Research and Methods). Stakeholders included: Barbara Bovbjerg (Education, Workforce, and Income Security); Tom McCool (Applied Research and Methods); Ronald Fecso (Chief Statistician); Sheila McCoy and Craig Winslow (General Counsel); Hiwotte Amare and Shana Wallace (Applied Research and Methods); Richard Stana and Mike Dino (Homeland Security and Justice); Jess Ford (International Affairs and Trade). Barbara Steel-Lowney referenced the report.

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

GAO's Mission	The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.
Obtaining Copies of GAO Reports and Testimony	The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site (www.gao.gov). Each weekday afternoon, GAO posts on its Web site newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to www.gao.gov and select "E-mail Updates."
Order by Phone	The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's Web site, http://www.gao.gov/ordering.htm. Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537. Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.
To Report Fraud, Waste, and Abuse in Federal Programs	Contact: Web site: www.gao.gov/fraudnet/fraudnet.htm E-mail: fraudnet@gao.gov Automated answering system: (800) 424-5454 or (202) 512-7470
Congressional Relations	Ralph Dawn, Managing Director, dawnr@gao.gov, (202) 512-4400 U.S. Government Accountability Office, 441 G Street NW, Room 7125 Washington, DC 20548
Public Affairs	Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800 U.S. Government Accountability Office, 441 G Street NW, Room 7149 Washington, DC 20548

Please Print on Recycled Paper

BOARD OF DIRECTORS

CHAIRMAN
Terry McGraw
The McGraw-Hill Companies

DIRECTORS
Indra K. Nooyi
PepsiCo

Sarish Ajay
Citigroup

Anil Bhalla
J.P. Morgan Chase

Sec. William S. Cohen
The Cohen Group

Paul Conway
Cargill

Nelson Cunningham
McLarty Associates

Francisco D'Souza
Cognizant

Bill Das
Acquitline Capital

Adm. Walter Doran
Raytheon

Brooks Entwistle
Goldman Sachs

Amb. Susan Esserman
Steptoe & Johnson

John Flannery
General Electric

V.S. Gopi Gopinath
AT&T

Rajat Gupta
McKinsey & Company

Heinz Hollik
Dow Chemical Company

Step Hill
The Boeing Company

Chip Kaye
Warburg Pincus

Richard Kirkland
Lockheed Martin

Arun Kumar
KPMG

Rich Levin
Caterpillar

Lawrence Ledbetter
NYSE-Euronext

Dick Macci
New York Life International

Vas Narasimhan
Novartis

Raj Nathan
Sybase

Robert Nelson
Akin Gump

Christopher Padilla
IBM

Ashish Prasad
Mayer Brown

Shaleen Rao
Google

Pierre Saggioli
Bank of America

Thomas Schick
American Express

Manoj Singh
Deloitte

Rajesh Subramaniam
Federal Express

Steven Wisch
IREO

Amb. Frank G. Wisner
Patton Boggs

PRESIDENT
Ron Somers
U.S. - India Business Council

USINDIA BusinessCouncil

March 29, 2011

The Honorable Elton Gallegly
Subcommittee on Immigration Policy & Enforcement
Committee on the Judiciary
United States Congress
Washington, D.C.

RE: Subcommittee Hearing on "H-1B Visas: Designing a Program to Meet the Needs of the U.S. Economy and U.S. Workers"

Dear Mr. Chairman:

On behalf of Chairman Terry McGraw and the Board of Directors of the U.S.-India Business Council, I would like to respectfully submit the following comments for the record to the Subcommittee on Immigration Policy & Enforcement.

Founded in 1975 at the request of the governments of the U.S. and India to deepen trade and strengthen commercial ties, the U.S.-India Business Council is now the premier business advocacy organization representing nearly 400 of America's top companies investing in India. Our primary mission is to be the direct link between American and Indian business and government leaders, resulting in increased trade and investment between our two nations.

In support of this mission, I am writing to voice our overwhelming support for the H-1B visa program, which has been a critical tool in strengthening bilateral trade and investment between the United States in India. Indeed, this program has helped spur economic growth, job creation, and innovation here in the United States. Ensuring that America has a balanced and fair H-1B program is critical to the ability of our companies to tap global talent and remain competitive in the global economy.

Specifically, the H-1B program has allowed U.S. companies to tap talent from around the world to support operations in the United States. This program provides companies with the flexibility to bring certain skilled labor to the United States on a short-term basis to support research and development activities and critical business operations. U.S. companies can augment its existing workforce with specialized talent for a fixed, short-term basis. The ability of our member companies to tap such global talent has served as a critical incentive to maintain and grow their operations here in the United States.

Moreover, the H1-B program has helped attract billions of dollars of Indian investment into the United States, which in turn is supporting tens of thousands of quality jobs in all fifty states. According to independent studies, between 2004 and 2009, Indian companies invested close to $ 26.5 billion ($ 5.5 billion in 129 Greenfield Investment projects and $ 21 billion in 267 Merger and Acquisitions) in the United States, in sectors as diverse as manufacturing,

1615 H Street NW, Washington, DC 20062 • Tel: (202) 463-5679 Fax: (202) 463-3173 • usibc@uschamber.com

Information Technology, biotechnology, chemicals and pharmaceuticals, automobiles, and telecommunications. Many of these investments were only made possible by the H-1B visa program, which created vital incentives for Indian companies to invest and create a permanent presence in the United States.

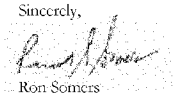
We remain concerned with continuing false perceptions about the nature of Indian investment in the United States and the use of the H1-B program by Indian companies. The specific targeting of Indian companies could create unintended consequences, including a backlash against U.S. companies operating in India. The ability of our companies to compete and win in one of the world's fastest growing economies is critical to America's economic recovery.

Indeed, American investments in India, coupled with strong direct export growth, have led to significant job creation throughout the United States. India continues to be a critical and growing market for our goods and services. For example, the Government of India estimates that future infrastructure development opportunities will be $1.7 trillion. Current defense procurement plans by India are worth nearly $50 billion over the next five years, including the Medium Multi-Role Combat Aircraft Procurement, which is worth $11 billion. Boeing and Lockheed Martin are both strong contenders for the contract, one of the largest aircraft procurements in modern history.

The continued targeting of Indian companies could these opportunities in jeopardy. Unfortunately, Congress has targeted Indian firms and used them to pay for unrelated US initiatives by imposing large and discriminatory fee increases on 50/50 firms seeking to sponsor new H-1B and L-1 visas. These fees were included in two pieces of legislation signed into laws during the 111th Congress; the Supplemental Border Security Bill and the 9/11 Health Responders Bill. In both instances, the fees were included as revenue offsets. Moreover, in several instances prominent Members of Congress spoke out against Indian companies, in one instance calling them "chop shops."

Such rhetoric undermines our overall bilateral relationship and puts in jeopardy important commercial opportunities. The strategic partnership between the U.S. and Indian rests on the successful growth of commercial ties between the world's two largest free-market democracies. We hope that the Congress and Administration will work constructively with the private sector to design an H1-B visa program that fosters deeper trade and investment and drives continued growth, job creation and innovation here in the United States.

Sincerely,



Ron Somers
President, U.S.-India Business Council

Statement for the Hearing Record by Conservatives for Comprehensive Immigration Reform Co-founder Robert Gittelson, on the House Immigration Subcommittee Hearing on March 31st, 2011, "H-1B Visas: Designing a Program to Meet the Needs of the U.S. Economy and U.S. Workers."

I would like to commend the leaders of the House Committee on the Judiciary Subcommittee on Immigration Policy and Enforcement for convening the upcoming hearing on H-1B Visas: Designing a Program to Meet the Needs of the U.S. Economy and U.S. Workers. This is an issue that is fundamental to America's need to reform the way that we conduct our nation's immigration policy. While this issue does not attract the same degree of attention as some of the other components of our broken immigration system, it is a vital element of any successful strategy to rebuild and re-energize our economy.

I was privileged to be able to hear James Q. Wilson, the Ronald Reagan Professor of Public Policy at Pepperdine University, speak on this issue earlier this month at the beautiful Reagan Library. According to Professor Wilson, he thought that our nation should probably increase the quota of H1B Visas available to our nation's businesses, perhaps by a factor of 5. More importantly, he spoke to the need for the free market to have more influence on this component of our immigration system. He couldn't be more correct. If we talk about meeting the true needs of our growing economy, this issue is at ground zero of that debate.

However, I would emphasis that while our nation has historically kept the availability of H1B visas well below the needs of our free market economy - thus mitigating the growth of our economy, and the U.S. citizen and legal immigrant jobs inherent in that growth – I would issue a note of caution. Specifically, I would hope that through this hearing process, and without undo regulation on the part of government, we could assist as well as motivate our business community to go the extra mile, and first try their very best to hire citizens and legal immigrants if at all possible as new H1B type jobs are created through our economic growth.

That being said, I urge the Subcommittee to examine new ideas as to how we can allow the free market to be more influential in the H1B allotment process. Perhaps through some sort of auction process, or perhaps through something akin to the way Major League Baseball allows teams to go over the salary cap – or in this case the H1B visa cap – by paying some sort of fine, it would introduce a more sound, free market, economic base to the allotment of H1B visas. I thank the Subcommittee for looking at this issue.

April 4, 2011

The Honorable Elton Gallegly
Chairman, House Subcommittee on Immigration Policy and Enforcement
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Gallegly:

On behalf of the American Council on International Personnel (ACIP), I thank you for holding the hearing entitled, "H-1B Visas: Designing a Program to Meet the Needs of the U.S. Economy and U.S. Workers,"on March 31, 2011, to address the overall structure and function of the H-1B visa program. While, ACIP believes federal lawmakers should consider alternative solutions for ferreting out fraud and abuse in the system, we believe it is imperative that compliant employers have seamless access and retention of the talent necessary to grow America's 21st century economy and workforce.

ACIP is the leading trade association that advocates for sound business immigration policy. Our members consist of over 220 of America's largest companies, universities and non-profit research institutions. ACIP works directly with the in-house human resource and legal professionals responsible for hiring, transferring and retaining top talent as a part of their organization's global workforce. In an increasingly integrated global market, where high-skilled immigration has remained largely unchanged since the early 1990s, our members need an immigration system that includes a vibrant temporary visa program *and* fully functioning green card system. ACIP has long supported both the H-1B visa and employment-based green cards as vital tools critical to our national interest – one that allows U.S. employers to hire and secure the very best and brightest talent worldwide so that we might continue to out innovate, out compete and out work our global competitors, while protecting, educating and training American workers.

A sensible U.S. visa system is one that keeps pace with the demands of an increasingly competitive global economy – one where emerging markets are anxious to beat us – something Majority Leader Cantor noted last week when he stated, "As a country we have always invited the best and brightest from around the world – many of whom are educated in our universities – to contribute to our economic growth. Yet our visa system has failed to keep pace with the demands of our economy. If bringing in high skilled workers from abroad helps us keep thousands of jobs here in America, our antiquated laws should not be a barrier."

While it is crucial that our green card backlogs – which at times span over a decade for high-demand countries – be cleared so that workers can be promoted, change jobs and their spouses can work, it is just as important that we maintain the H-1B visa as a temporary vehicle for human capital, as it often is the only way to get those foreign

professionals on the job quickly; the only way to bring highly skilled workers to perform a temporary assignment; and, typically the only "bridge" to permanent residence.

At the same time, we support strong and sensible enforcement that protects American and foreign-born workers, that better identifies and punishes bad actor employers, and that recognizes that the majority of employers who hire foreign-born professionals comply with our U.S. immigration laws. In fact, we strongly believe a Trusted Employer registration program would enhance government oversight and enforcement of our visa programs, while providing employers who comply with U.S. immigration laws more predictable and efficient visa processing. Through a new Trusted Employer Unit at the USCIS, a team of adjudicators would have the ability to get to know better employers' business models through a streamlined visa petition process that ultimately would create efficiencies and predictability by cutting backlogs and requests for evidence, while allowing any saved resources to be put toward other priorities, such as visa enforcement and fraud prevention and detection.

As we continue to work toward the best solutions to realize less fraud in the employment-based immigration system and prioritize access to top talent, we continue to believe facilitating the employment of many U.S. STEM advanced degree graduates is of critical importance to our country's economic health, competitiveness and innovation, and national interest. We support a system that would provide more flexibility to hire and retain these individuals here at home, by granting these students dual intent so that they might apply for a green card upon graduation, should they have a job offer. Our employers continue to recognize that until we have more U.S. students and workers in STEM fields, we must work hard to grow domestic sources of talent and improve U.S. STEM education, while encouraging more young Americans to choose STEM careers.

ACIP looks forward to working with the Subcommittee this year to address these timely issues that will only help employers grow our economy and create jobs through these important reforms to hire and retain key global professionals and address any fraud in the system, while creating new efficiencies. ACIP thanks the Subcommittee for holding this hearing and asks the Subcommittee to consider our recommendations.

Respectfully submitted,

Lynn Shotwell
Executive Director

cc: Hon. Zoe Lofgren

March 31, 2010

Testimony to the House Judiciary Subcommittee on Immigration Policy and Enforcement Hearing on H-1B Worker Visa Issues

Submitted by Som Mittal, President, National Association of Software and Service Companies, (NASSCOM)

Thank you Chairman Gallegly and Ranking Member Lofgren for holding this timely hearing on a topic of great importance, H-1B visa and worker issues. I appreciate the opportunity to submit testimony, on behalf of NASSCOM and our member companies, for the record.

The H-1B visa is a critical tool for creating innovation and spurring economic growth in the United States. Getting it right will ensure the US continues its recovery here and around the world. It will also set an example for other nations to follow in their own immigration policies. Getting it wrong, however, by tightening the program's criteria or imposing discriminatory new fees will hinder economic growth and raise difficult issues between trading partners. My organization and I look forward to working with you on these important issues.

NASSCOM is the premier trade body and chamber of commerce in India for information technology and business process outsourcing (IT-BPO). NASSCOM's membership consists of the innovative firms that make and deliver the software and technology services that industries around the globe rely upon every day. As a global trade body, our more than 1,200 members include all the major US, EU, Indian and other multinational companies. Broadly speaking, these firms provide on-site and remote software development and software services, engineer software products, manage client operations, and deliver consulting services, BPO services, e-commerce & web services, and engineering services. In India itself, our membership constitutes over 95% of the industry revenues and employs over 2.5 million professionals.

NASSCOM devotes significant time and resources to encouraging the elimination of trade barriers, supporting the movement of high skilled individuals, and more. It is fair to say that among other things, NASSCOM has played a very significant role in past decades in opening up the Indian marketplace for U.S. and other foreign technology firms and in ensuring that highly skilled individuals can enter India for business assignments with little difficulty. Such liberalization has been easier to achieve, NASSCOM has found, when the U.S. is also liberalizing its rules, not tightening them.

Whether in the U.S., India or elsewhere, NASSCOM's members and their products and services are key drivers of economic growth and job creation. They have created thousands of new well-paying jobs in the U.S. in the past year alone. Indian companies operating in the U.S. have been successful only because they are serving the needs of customers. Making those customers more competitive and focused on core competencies not only minimizes job loss, but also strengthens these U.S. companies as they compete in the global marketplace.

The H-1B visa is integral to the success of NASSCOM member companies – be it Indian, US or other – to provide their services, especially for onsite work in the U.S., which is key to the business model.

Our firms require both permanent staff in the US (which are typically local hires) and the deployment of Indian staff to the U.S. on visas for short-term client assignments (where, unlike nearly every other developed nation in the world, there is no short term service visa). Our members abide by all U.S. laws and regulations, and make very significant efforts to hire U.S. employees. The firms collectively have hired tens of thousands of US citizens and paid hundreds of millions of dollars in U.S. taxes and fees. Their staff (citizens and visa holders) are valued members in communities across America, paying taxes, volunteering, and more.

Please allow me to provide an example to underscore this point. Indian IT and BPO companies have created more than 100,000 direct jobs in the United States, with the top six Indian IT companies alone creating in excess of 35,000 jobs. These companies are also beginning to attract and recruit students from American Universities; in the last three years, some of the top Indian companies have visited more than 450 colleges in the United States as a part of campus hiring programs and have, to date, made more than 1,100 job offers. While the total number of people employed in the United States hy these companies has decreased by ahout 2 percent, the percentage of Americans employed by these companies has increased by over 30 percent.

One of India's largest IT service firms now employs more than 13,000 non-Indian citizens in the U.S., nine times as many as they did in 2005. This same firm also consistently demonstrates its commitment to the communities in which its operations are located in the United States. Partnering with the Foundation for Appalachian Ohio, this firm contributes significant financial and human resources, with the aim of enriching the current and future quality of life for residents of the 29 counties of Appalachian Ohio. It has pledged to provide a three-year grant of $75,000 to create educational opportunities for children in these counties and has donated over 65,000 new books to children in need. The firm's support also encompasses workshops, summer camps, student awards, and website enhancements planned for three schools around Cincinnati, bringing awareness of IT career opportunities to high school students in the region. In fact, the Workforce One Investment Board of Southwest Ohio recognized this firm as one of its six "Investing in People" award recipients last year.

It also is worth mentioning that it is not just in the IT sector where Indians are contributing to the U.S. economy. Approximately 2.57 million Indian Americans contribute to the U.S. economy by way of paying taxes, creating demand, and consuming goods. For example, about 10,000 Indian American hotel/motel owners in the U.S. employ 578,600 workers. In addition, India sends a large numher of students to study at universities in the United States. In 2008, there were 94,500 students from India contributing over $2.39 billion to the U.S. economy.

In spite of these facts, there is a false perception among a few that Indian firms harm U.S. interests. For example, Indians and India-based IT firms are thought to be tbe majority users of the H-1B visa. This statement is misleading. While it is true that a majority of H-1B visas are issued to Indian nationals, a very significant share of these visa holders are hired from U.S. campuses, and the overwhelming majority of visa holders are employed by U.S. rather than Indian businesses. Contrary to public perception, the Indian IT/BPO firms receive only a small percentage of the visas. To this point: in FY 2009, less than six percent of new H-1B petitions went to Indian technology companies, and that percentage has been steadily declining over the past several years.

Beginning in earnest in 2008, NASSCOM member companies have been unfairly targeted in the U.S. by a variety of legislative and regulatory efforts. I recognize that targeting these firms during a period of economic downturn and high unemployment may appear to be a good political strategy, but in reality, doing so only hurts U.S. interests, and further hinders economic recovery and job creation.

In the last year, Congress has considered and passed legislative measures which negatively and unfairly affect Indian and India-centric companies doing business in the United States. The most discriminatory were those imposing new requirements on so called "50/50" firms. 50/50 firms are those that employ more than 50 U.S.-based employees, and where more than half of those employees are H-1B and L-1 visa holders. Some leaders of the U.S. Senate have proposed barring such firms from sponsoring any individual for a new visa application. Fortunately, Congress understands the significant impact this specific proposal would have on U.S. firms and America's global interests, and have not advanced the proposal for an outright prohibition.

Nevertheless, Congress has targeted these firms, using them to pay for unrelated U.S. initiatives by imposing large and discriminatory fee increases on 50/50 firms seeking to sponsor new H-1B and L-1 visas. These fees were included in two pieces of legislation (the Supplemental Border Security Bill and the 9/11 Health Responders Bill) signed into law during the 111th Congress. In both instances, the fees were included as revenue offsets. The heightened fees represent a fourfold increase, creating a new non-tariff barrier to trade and encouraging more work to be performed offshore by U.S., Indian, and other firms.

Why should the U.S. Congress care about the Indian and India-centric IT services firms? The primary reasons are three-fold. First, because many leading U.S. businesses have come to rely upon such firms for creative and support services, and for the talent needed to maintain and grow their local and overseas operations. Second, because in today's global marketplace, the Indian and U.S. economies are more interconnected than ever before. While it is true that some American jobs have been moved abroad, and that it is always a serious matter when someone loses a position, the numbers of those displaced are actually very few when compared to the vast numbers of jobs created or preserved in the U.S. directly and indirectly by NASSCOM members. Third, the growth of the India-based technology sector has benefited American interests. As the Indian economy has grown and India's middle class has expanded exponentially, demand for U.S. goods and services in both the commercial and public-sector marketplaces has exploded. This is a trend that could be put at risk if the Government of India were to choose at a future time to retaliate for what is perceived by some as a rise in protectionism by the United States.

Our IT services and BPO firms deserve to be recognized for the significant efforts they are making to hire locally. While some firms are modest in size, given their recent entry into the U.S. market, the fact is that the sector has been moving aggressively to hire U.S. citizens and convert visa holders to permanent status when practical. The very nature of the IT services and BPO business model, however, is such that firms will always require access to skilled foreign nationals to fill some essential need on a temporary basis.

The United States and India have developed an increasingly close bilateral partnership. As the world's largest and oldest democracies, both countries have a great deal to offer each other. The H-1B visa is an essential tool for enhancing economic growth in both countries. In tough economic times, it is tempting to turn inwards and pursue protectionist measures. The implementation of the visa fee increases and the 50/50 rule are results of this natural tendency. However, restrictions that unfairly impact Indian companies, and force them to shoulder a disproportionate burden of the cost are harmful to everyone's best interests. NASSCOM and its member companies are committed to continuing to build a strong economic partnership with, and create jobs within, the United States. We ask you, members of the U.S. Congress, to aid us in this endeavor, and to pursue fair and balanced regulation of the H-1B visa.

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA
1615 H STREET, N.W.
WASHINGTON, D.C. 20062

RANDEL K. JOHNSON
SENIOR VICE PRESIDENT
LABOR, IMMIGRATION, &
EMPLOYEE BENEFITS

AMY M. NICE
EXECUTIVE DIRECTOR
IMMIGRATION POLICY

April 6, 2011

The Honorable Lamar Smith
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Elton Gallegly
Chairman
Subcommittee on Immigration Policy
and Enforcement
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Zoe Lofgren
Ranking Member
Subcommittee on Immigration Policy
and Enforcement
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Re: For the hearing record, concerning the March 31, 2011 hearing on H-1B Visas: ***Designing a Program to Meet the Needs of the U.S. Economy and U.S. Workers***

Dear Chairman Smith, Ranking Member Conyers, Chairman Gallegly and Ranking Member Lofgren:

On behalf of the U.S. Chamber of Commerce, we would like to express our view that the H-1B visa category plays an important role in allowing U.S. employers to remain competitive in the global economy by permitting the lawful hire of immigrant professional staff identified as the best qualified and available for a particular job opportunity. We request that this letter be included in the hearing record, along with the attached Executive Summary of our study "Regaining America's Competitive Advantage: Making our Immigration System Work."

The Chamber is the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector, and region. Many of our members are H-1B petitioners, who utilize the category to hire professional staff, after determining that an immigrant professional is the best qualified and available worker with the skill set needed by the employer, often a skill set developed through

completion of university training in the U.S. Moreover, for our member U.S. organizations that are not part of a multinational family of companies, the H-1B visa category is usually the only tool available to hire an immigrant professional worker. That many different employers in many different sectors utilize the H-1B category to hire professional staff is evidenced by the fact that in FY09 over 27,000 different employers in America hired at least one H-1B worker.

We fully support the comments submitted by, and testimony from, Bo Cooper, a leading immigration lawyer who presently works with the Compete America coalition, of which the Chamber is a member, and was previously General Counsel at legacy INS. Critically, Mr. Cooper explained at the recent hearing why "the H-1B program is an indispensible part of the high-skilled immigration ecosystem." We would like to emphasize three critical points, from the perspective of United States employers.

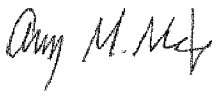
STEM retention. Retaining talent we educate and nurture should be a priority, especially graduate students who become integrated into American business and research and development through completion of a Masters or higher at a U.S. institution of higher education. In particular, graduate students in science, technology, engineering and mathematics fields (hereafter STEM) should play a prized role in our immigration system. Given the demand in our market place for STEM professionals and the well-established role STEM jobs play in both creating additional employment opportunities and maintaining the U.S. role as the innovation leader across disciplines, we can't afford to encourage, or even allow, U.S. educated STEM graduates to move or return abroad to work for the competition. In Texas, 60% of all Masters degrees in engineering disciplines and 65% of all doctoral engineering diplomas are granted to foreign born students. In Michigan, 41% of all engineering Masters degrees and 53% of all engineering Ph.Ds go to foreign born students. In California, 44% of all engineering Masters degrees and 49% of all engineering doctorates go to the foreign born. We can't ignore the fact that the H-1B category has been the critical means for allowing employers to hire these STEM staff.

Portability for H-1B workers. Current law, based on the American Competitiveness in the 21st Century Act (AC21), allows H-1B professionals to "port" their H-1B status to a new employer, which may be considered a linchpin for H-1B workers' ability to participate in the U.S. marketplace of ideas and innovation. However, because of the long backlogs in the permanent residency sponsorship process, H-1B workers are often discouraged from taking advantage of this portability because of the impact a change in employer may have on the already commenced permanent residency process. Nevertheless, many H-1B workers regularly utilize the AC21 portability authority, and begin working for a new H-1B sponsor upon the receipt at USCIS of a "change of employer" H-1B petition. USCIS could, perhaps, provide data as to how often such H-1B portability occurs by identifying how many petitions it received last year where the basis of classification was "change of employer" (if the agency keeps data on how petitioners answer Form I-129, Part 2, Question 2).

Chamber study. In light of the Chamber's interest in examining high skilled immigration programs and proposals, we commissioned a study, published in August 2010, to analyze facts and figures concerning skilled foreign nationals in our workforce. The study, entitled "Regaining America's Competitive Advantage: Making our Immigration System Work," found that the best policy for the United States concerning high skilled immigration was one that allows employers to innovate with whichever key staff they select, allows and encourages the highly educated immigrants completing degrees in the U.S. to remain here, and does not restrict the ability of employers to hire and retain top talent. The study also highlights how the H-1B category both provides an avenue to hire immigrants in STEM fields and funding for improved STEM education for Americans (through the training fees filed by H-1B employers, which have funded 58,000 college scholarships through the National Science Foundation and training for over 100,000 through the Department of Labor).

We look forward to working with you on these important issues, and appreciate any consideration you can give to our concerns. Please accept this letter, and the attached Executive Summary of our August 2010 study, for the hearing record on H-1B visas.

Sincerely,



Randel K. Johnson
Senior Vice President
Labor, Immigration and
Employee Benefits

Amy M. Nice
Executive Director
Immigration Policy

Attachment:
http://www.uschamber.com/sites/default/files/reports/100811_skilledvisastudy_execsummary.pdf

NATIONAL IMMIGRATION FORUM

Statement for the Record

House Subcommittee on Immigration Policy and Enforcement

"H-1B Visas: Designing a Program to Meet the Needs of the U.S. Economy and U.S. Workers"

March 31, 2011

The National Immigration Forum works to uphold America's tradition as a nation of immigrants. The Forum advocates for the value of immigrants and immigration to the nation, building support for public policies that reunite families, recognize the importance of immigration to our economy and our communities, protect refugees, encourage newcomers to become new Americans and promote equal protection under the law.

We are submitting our views about the subject of this hearing on H-1B temporary worker visas.

The U.S. benefits from the many immigrants with special skills it attracts each year. The H-1B program is an important component of our system, in that it allows American employers to temporarily employ foreigners who have particular skills employers need. Unfortunately, the program (and other temporary worker programs) has become to a large extent a substitute for a permanent employment system that does not provide enough visas for skilled workers. Our immigration admission system has not been adjusted in more than twenty years.

The vast majority of individuals receiving green cards through the employment-based immigration system are adjusting from temporary visas. Many H-1B visa holders are here because employers want to hire them permanently, but there are simply not enough employment visas available. H-1B workers can have their three-year temporary status extended for another three years. During that entire time, workers are dependent on the sponsoring employer, and there is no certainty that a permanent visa will come through at the end of their temporary stay. The uncertainty results in many giving up and leaving the U.S., taking their skills with them. This hurts U.S. competitiveness.

The lack of employment visas is not just a problem experienced by high-skilled workers and their employers. There are virtually no visas available for lower-skilled workers, even though demand for these workers has at times been very high.

Congress must update the employment-based admission system. In the H-1B context, more permanent visas would provide more certainty for the foreign worker, who would then be able to invest in making this country his (or her) permanent home. It would also provide more protection for the worker, who would no longer be dependent on a single employer for his or her status. American workers and foreign workers alike benefit if one group is not especially vulnerable to a bad-apple employer's illegal behavior.

50 F Street, NW, Suite 300, Washington, DC 20001 | T 202-347-0040 F 202-347-0058 | www.immigrationforum.org

For those employers who ultimately want to hire a worker permanently, more permanent visas would provide greater certainty, removing the fear that a worker would have to leave after six years.

The inadequacy of our permanent admission system has created a patchwork of strategies to go around it, and a patchwork of regulation and enforcement that would be less necessary if the root problem was addressed. Cougress must reform our broken immigration system.

Opening Statement & Questions

of the

Honorable Maxine Waters, D-35th CA

Judiciary Subcommittee on Immigration Policy and Enforcement

Hearing on

"H-1B Visas: Designing a Program to Meet the Needs of the U.S. Economy and U.S. Workers"

March 31, 2011

2141 Rayburn Building

10:00 a.m.

Thank Mr. Chairman. I apologize for my late arrival. I am Ranking Member on the House Financial Services Subcommittee on Capital Markets, and we had a very important hearing I had to attend. I want to commend the Subcommittee for organizing this hearing to discuss the H-1B visa program, and I hope we hold more in the future.

I would like to use my limited time to make some observations and read my statement into the record.

I believe this hearing is particularly relevant in light of our nation's ongoing high unemployment rate. In fact, I have taken a particular interest in Silicon Valley and our multinational tech firms, who many believe are not doing their due diligence to recruit and retain highly skilled, diverse IT professionals in the United States. Accordingly, I have grown increasingly concerned with the level of outsourcing that I believe has displaced some American jobs. While each equation it not always 1 to 1, there are admittedly some jobs that corporations have outsourced that Americans could hold.

Just this morning, I read in *The Economic Times* that over the past few weeks, two individual lawsuits alleging H-1B visa misuse and age discrimination in local hiring have been filed against Infosys (Info-sis), the country's second biggest tech firm that counts JP Morgan among its top customers. It is also worth noting that Infosys (Info-sis) had 3,792 approved H-1B visa applications in 2010.

[Mr. Chairman, I ask unanimous consent to have this article placed in the record]

Today, many of these tech firms have outsourced call centers, research & development, and software development. In the wake of the economic downturn, they have made strategic changes in production so that they can maximize profits – as any business would do. Companies like Intel, Microsoft, and Google are making significant investments overseas, creating jobs and opportunities for foreign workers as American workers struggle to recover from the greatest economic collapse since the Great Recession.

Just last month, the Wall Street Journal reported that Google Inc. pledged $5 million to upgrade and support 50 elementary

schools run by India's Bharti (Bar-tee) Foundation. The funds will be used for setting up middle schools and to meet the operational costs to upgrade primary schools to elementary level. Indeed, this is a commendable effort, and we applaud corporations who undertake such philanthropic endeavors.

However, if the country is suffering a shortage of intellectual capital and we need to encourage more students to enter computer science and engineering degree programs in the U.S., then why can't more of our multibillion dollar tech firms take such philanthropic and proactive action in U.S. or invest in public schools? To be fair, I know that Google has taken some steps to improve its investments and outreach in the U.S. (and Facebook also donated $100 million to one of New Jersey's public school districts), but there is more work to be done. Our nation's young people spend a lot of time on the Internet, playing video games, and **using** mobile devices. They are able to adapt to new technology quicker than most of us here on this Subcommittee. I do not believe any of our tech firms would have to expend a lot of resources to simply engage the youth in their communities – teaching them about the exciting careers that exist in software development of mobile applications.

Mr. Chairman, I believe that our nation's tech firms will fuel the nation's economic recovery. They are indeed, innovative and have created wonderful products that have completely changed the way people communicate worldwide. I support them in these endeavors, and I am usually in agreement with the industry on issues such as net neutrality and ensuring that we have an open Internet market that facilitates innovation and competition. At this time, however, I think the companies could do more to work with communities and universities to ignite interest in tech jobs. I understand that they want to recruit the best and the brightest in their efforts to remain globally competitive, but I strongly believe that in the same way they are investing overseas, they can invest here, at home, in America's potential.

In closing, Mr. Chairman, I would like to request unanimous consent to submit a report for the record completed by Diversant LLC.

[So ordered]

Thank you, and I yield back the balance of my time.

Diversant is a minority IT staffing firm that works with companies nationwide to recruit qualified minority IT professionals. They also assist corporations in efforts to diversify their workforce and improve supplier diversity.

Clearly a greater number of domestic students of greater diversity need to be encouraged to study STEM disciplines if the US is to increase its supply of this vital IT talent. While utilizing H-1B visa workers provides some short-term relief, a concerted effort between the government, universities, and the IT Industry needs to be made in order to increase the mid-term and long-term supply of qualified IT workers. Ideally, any such initiative should include immigration policy to coordinate transient supply and transition foreign workers into a resident domestic supply.

In the short-term, efforts to increase domestic supply of qualified talent can be aided by training already-skilled professionals in STEM proficiencies. Applied training provided by Corporate and Academic sponsors, complemented by a community of mentors, could transition already talented workers into IT professionals. The bulk of the US's domestic supply must come from education programs, which will require the early promotion of STEM disciplines to encourage stud in these fields. As noted before, human capital is the most valuable asset for technology companies; they, along with the Government and academia, need to make need to make strategic investments in these assets commensurate with their value.

ATTACHMENTS

Advertisement

DLF IPL Watch Now! April 8 – May 28

Ads by Google

JJ Keller DVD Training
Employee Sexual Harassment Preview & Order Training Online
www.JJKeller.com

US Marriage Immigration
Specializing in US Marriage Visas, AOS & marriage based Green Cards.
www.1-800-usa-immigration.com

RELATED KEYWORDS: Infosys

Infosys faces charges of H1B visa misuse, age discrimination

Pankaj Mishra, ET Bureau | Mar 30, 2011, 04.22am IST

Tags: Toyota | Monster.com

0 3 Recommend

BANGALORE: For India's top outsourcing companies looking to hire more local staff in the US, allegations of visa misuse and age discrimination in recruitment is the latest form of backlash to deal with.

Over the past few weeks, two individual lawsuits alleging H1B misuse and age discrimination in local hiring have been filed against Infosys, the country's second biggest tech firm that counts JP Morgan among its top customers.

Leading Diamond Jewel...

While Infosys is the only company to have faced individual lawsuits, tougher visa regulations are affecting business for India's $60-billion software exports industry. For instance, US visa rejection rates for Indian techies have doubled from around 4% to over 8% over the past nine months.

"We're still quite young in this game. We'll need to learn from how companies like Toyota dealt with such issues many years ago," said a senior official at one of the leading Indian technology firms with operations in the US. He requested anonymity because he's not authorised to comment on this issue. "We are making sincere efforts to hire more locally and even engage with policymakers, such lawsuits against big outsourcing brands are opportunistic," he added.

RELATED ARTICLES

Partnerships in a bind over EU age discrimination law
September 29, 2008

Generational leap: Age no bar for Cos
January 3, 2011

Coming of age
January 15, 2010

Until last year, Infosys, Wipro and Tata Consultancy Services had to deal with new legislations and proposals that increased fee for work permits and even made it tougher for them to send Indian techies to the US for delivering projects locally. Now that the political rhetoric against outsourcing companies seems to have slowed down, these lawsuits are beginning to raise concerns about a new face of anti-offshoring backlash.

In the age discrimination suit filed by 58-year-old Ralph DeVito of New Jersey against Infosys, he has alleged that the company rejected his application filed through job portal Monster.com despite having adequate experience. According to the complaint, Infosys had set the maximum experience as 25 years, which DeVito had while applying in August 2009.

"The maximum experience requirements constituted a limitation, specification or discrimination as to age i.e. a de facto age limit because they were more likely to eliminate applicants for the Infosys positions who were age forty or older," DeVito said in his complaint, a copy of which is with ET.

DeVito filed a complaint with America's Equal Employment Opportunity Commission (EEOC), which after investigating the matter gave him the right to sue Infosys. An Infosys spokeswoman declined to offer any comments on the lawsuit. On its part, Infosys has already acted upon the suggestions of EEOC and has even made necessary changes in the job posting, according to a person familiar with the process.

"In many ways, Infosys represents the Indian outsourcing brand and that is why it's being targeted right from a senator's 'chop shop' comment," said a senior executive who works with a rival firm and is based in the US.

Infosys is also facing a more serious allegation of misusing work permits. In February, Jack Palmer, a principal consultant with Infosys since August 2008, filed a complaint with the Alabama Court saying the company was sending employees on B1 visas to work full time in the US, though the visa is only meant for visitors who come for meetings, conferences and business negotiations.

An Infosys spokeswoman said her company is investigating the visa misuse allegation. "We are aware of the law suit filed in Alabama by an employee. We believe in conducting our business with integrity. As a result, we take these allegations seriously and are investigating them thoroughly," she said last month.

In his complaint, Palmer said the company had asked him to come down to its headquarters in Bangalore to devise ways to overcome the restrictions on H1B visas that had been put in 2009. He was also asked by the company to write "welcome letters" for Indian employees so they could come on B1 visas.

Palmer said he had taken up the matter with the company's corporate counsel Jeff Friedel and that subsequently a manager from India confirmed the violations but asked him to keep things quiet. Friedel also confirmed the fraud to him, Palmer said in his complaint.

According to ComputerWorld, the case has attracted federal investigators in the US who are asking for Palmer's laptop to investigate the matter. The magazine also said Infosys was looking to take the case to an arbitrator. Experts such as Philadelphia-based immigration lawyer Morley J Nair say at a time when US unemployment rates are high, anything even remotely connected with job discrimination will evoke a backlash.

"These cases should be of concern to all types of employers who put restrictive conditions in their ads that can lead to discrimination of any kind, not only to Indian companies operating in the US. Moreover, in this era of high unemployment, any employment ads that even remotely seem to contain restrictive or tailored requirements will invite more attention than needed," he said.

"The lawsuit says that the plaintiff first contacted the US Equal Opportunity Employment Commission and that agency concluded that he had suffered age discrimination and did send him a notice of right to sue," added Nair.

THE ECONOMIC TIMES
© 2011 Bennett, Coleman & Co. Ltd. All rights reserved

Financial analysts tracking the sector said protectionism could affect the business of outsourcing and needs to be watched out. "While we do not consider protectionism a game changer for services outsourcing yet, incidents of the past few months have us especially worried. Events are silently piling up, and perhaps a keener look is warranted. While near-term impact for Indian technology firms could be lost revenues and higher sub-contracting costs, medium/long-term impact could be in the form of higher onsite delivery costs and lower competitiveness in select cases," CLSA analysts Bhavtosh Vajpayee, Nimish Joshi and Arati Mishra said in their March report.

Index by Date | Index by Keyword

Ads by Google

H1B Visa Transfer
Transfer & Sponsor H1B visas in IT Min. 90% Billing Rate is Yours
www.independenth1b.com

Grievance Investigations
Manage Employee Complaints & Grievance Investigations. Free Demo
www.i-sight.com/employee_relations

FEATURED ARTICLES

Tata Indica eV2 launched at a starting price of Rs 2.95 lakh

Osama bin Laden dead, body buried at sea: Report

Expect more correction in gold and silver: Jim Rogers

More:

- Silver hits 31-year high as demand increases
- Are silver prices at 31-year highs justified?
- Gold prices may hit $2,100/ounce in 2011: Standard Chartered
- High dividend yield companies back in demand
- Speculators back at it; use rally to palm off penny stocks to gullible investors
- Alul Auto sales up 50 % in FY-11

www.economictimes.com Advertise with us | Terms of Use | Privacy Policy | Feedback

Sources of IT Talent: A Brief Overview

A DIVERSANT Study

Prepared by Gregory Boquist

March 2011

DIVERSANT
Empowered by Difference

The IT Industry

The Information Technology (IT) sector is a prime contributor to American economic growth and competitiveness. Its pervasive influence creates new industries and improves productivity and efficiencies in existing ones. From the formation of personal mobile networks to the nation's cyber-security we are dependent on the sustained development of our IT sector.

Because of its nearly ubiquitous impact on the economy, it is difficult to estimate a meaningful value for the full spectrum of the IT sector. More easily established is the scope of the industry segment which specializes in performing systems and software development work. The Computer Systems Design segment[1] consisted of about 118 thousand companies in 2007, and realized some $276 billion in revenues during at that time.[2] About 1.3 million people were employed by the segment in 2007.[3] It is important to remember, however, that this segment represents a fraction of the IT development work performed overall across all non-specialist industries.

Employment in the IT Sector

Commensurate with the ongoing development in the IT sector is a growing demand for specialized talent to perform requisite work. This work tends to be project-based and variable in terms of demand for resources. Especially in the IT sector, human capital is the most valuable resource; it is a key asset to innovation and competitiveness. Human capital also represents a signification portion of IT development costs. For this reason there has been a general movement towards an increased utilization of contingent labor, which allows companies to reduce fixed labor costs and shift them to variable costs based on managerial strategies and changing economic conditions. This trend has facilitated the growth of the continent staffing industry which provides IT talent on an as-needed basis.

While it does not distinguish between permanent and contingent labor, the Bureau of Labor statistics estimates that there were some 3.3 million people employed in Computer and Math related occupations[4] in May 2009.[5] This population represented about 2.5% of the US adult workforce at the time. Of the 3.3 million, almost 97% were employed in computer and information sciences jobs; 42% were software engineers or systems analysts.[6]

Within the Computer and Math occupations there are observable disparities in racial composition relative to the US overall (Exhibit 1). While African-Americans represent about

---

[1] Classified as NAICS Code 5415: Computer systems design and related services

[2] *2007 Economic Census NAICS 5415*. US Census Bureau. Release date December 4, 2009.

[3] *Ibid*

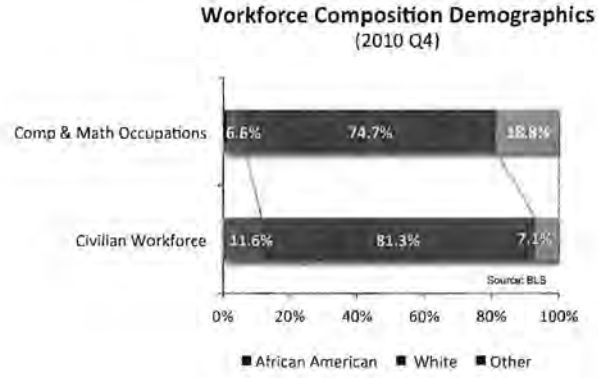
[4] Classified as SOC 150000: Computer and Mathematical Science Occupations

[5] *Occupational Employment Statistics for May 2009*, Bureau of Labor Statistics

[6] *Ibid.*

12% of the US civilian workforce, only about 7% are employed in Computer and Math occupations. In contrast, Asians account for a higher percentage of Computer and Math occupations relative to the US workforce overall.

Exhibit 1: Workforce Demographics



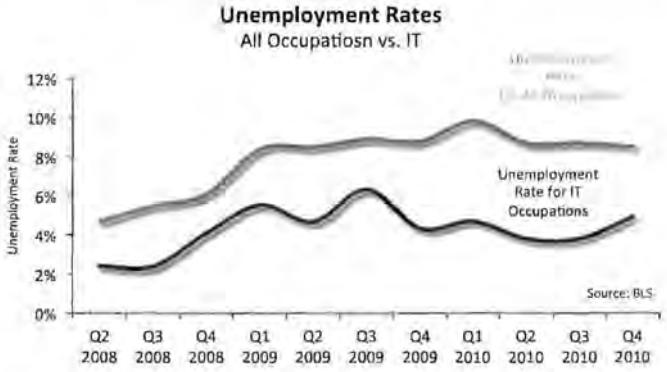
African-Americans are disproportionally underrepresented in Computer and Math occupations relative to US demographics overall.

Supply and Demand for IT Talent

Demand for IT talent in the US is outpacing the indigenous supply. One way to illustrate this is to use unemployment rates as a proxy for relative demand. If the unemployment rate for a given segment is lower than the overall rate, then it may be inferred that occupations in that segment are in above-average demand. This is the case with IT-related occupations (Exhibit 2).[7] Since 2008, IT related jobs have enjoyed consistently lower unemployment rates than the average for all jobs. The gap between unemployment for IT occupations and those overall has ranged from two to five percentage points over the three-year period, even during the prolonged economic downturn.

[7] For this study, an index of IT jobs was created. The index consisted of the average unemployment rates for Computer Programmers, Computer Software Engineers, Database Administrators, Network and Systems Administrators, and Network Systems and Data Communications Analysts combined.

Exhibit 2: Variances in Unemployment Rates



A lower-than average unemployment rate for IT jobs indicates a higher-than average demand for IT skills.

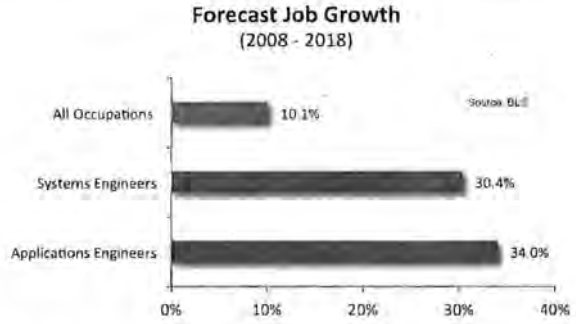
Future demand for IT talent is also forecast to grow well above job growth in general (Exhibit 3). According to the Bureau of Labor Statistics, job growth for all occupations between 2008 and 2018 is forecast to be just over 10%.[8] In contrast, growth in software systems and applications engineers is forecast at three times that for all jobs at 30% and 34% growth respectively.[9] The need for IT professionals will not simply grow; it will accelerate.

[8] *National Employment Matrix*, Bureau of Labor Statistics. Accessed March 24, 2011.

[9] *Ibid.*

Sources of IT Talent: A Brief Overview

Exhibit 3: Forecast Demand for IT Talent



Projected growth for some IT software development occupations is over three times that for all jobs in general.

American companies utilizing IT talent have a number of near-term options available to satisfy their demand for skilled labor that is not easily met through domestic supply (Exhibit 4). By offering higher than average wages, companies can attract more talent, but in so doing, these companies increase their costs and can create an escalating "war" for talent. Outsourcing (letting another foreign or domestic company perform the work) removes the burden of finding talent, but risks loss of control over quality and intellectual capital. Offshoring the work (performing the work at a foreign facility) requires significant investments and can increase project complexity. As a fourth option, companies can "import" talent instead of "exporting" work.

Exhibit 4: Near-Term Options for Fulfilling IT Talent Demand

OFFER HIGHER WAGES	OUTSOURCE WORK	OFFSHORE WORK	UTILIZE NON-NATIVE TALENT
+ Creates localized increase in domestic supply	+ Removes burden of finding talent	+ Removes burden of finding talent	+ Immediate supply
– Creates war for talent	– Loss of control	– Increases complexity	+ Lower total costs
– Increases costs; lowers competitiveness	– Possible quality & IP loss risks	– Requires overseas investments	– Limited supply

Companies performing IT work have a number of options for meeting their demand for talent; each with its own advantages and disadvantages.

By utilizing H-1B visa workers, companies can access foreign workers in the US that are well-educated and possess in-demand IT skills. They represent an attractive source of IT talent for companies seeking to perform work within the US where supply may be insufficient to meet demand. In 2008, Intel's US Immigration Manager conceded that "*If we're hiring an international worker; it's because we cannot find a US national for that position. And if we cannot hire the international worker, it means we cannot do that project.*"[10]

The Role of H-1B Visa Workers

The 1990 Immigration Act redefined the H-1B temporary-worker category to permit US employers to recruit skilled workers from abroad for professional specialty occupations on a limited-residency basis. These non-native workers tend to be recently graduated from university with up-to-date skills and have lower expectations of long-term benefits such as pensions from their US employers owing to the six-year limit on their visas.[11] From 2001 – 2004 the annual allocation of H-1B visas for scientists and engineers was 195,000; it has since been reduced by 67%[12] to 65,000 (plus an additional 20,000 for individuals with advanced degrees). A 2010 study estimated that that in 2009 new H-1B visa workers accounted for 0.06% of the civilian workforce. [13]

[10] As quoted in Kaleba, K. *Visa Squabble*. T+D, June 2008.

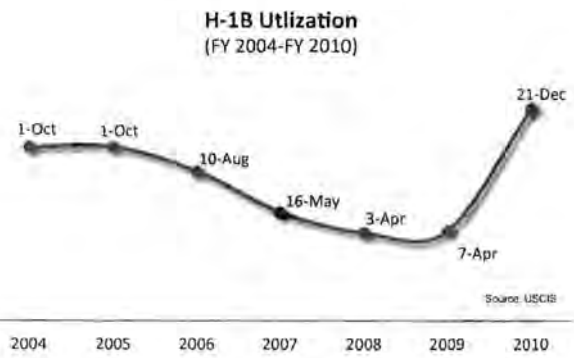
[11] Lowell, L. and Taylor, J. *Information Technology and Foreign-Born Workers in Contingent Jobs*. Institute for the Study of International Migration July, 2000.

[12] As referenced in West, D. *Creating a "Brain Gain" for US Employers: The Role of Immigration*. Brookings Policy Brief. January 2011. No. 178.

[13] *H-1B Visas by the Numbers: 2010 and Beyond*. NFAP Policy Brief. National Foundation for American Policy, March 2010

Since 2004, US companies have utilized 100 percent of the allotted H-1B visa talent available. In most cases, visa caps were attained well before the end of the government's fiscal year (Exhibit 5). Even during the depth of the current recession in FY 2010, all H-1B visas were used, albeit in December, owing to a sharp decrease in overall hiring. This finding, taken together with the relatively low rate of unemployment in IT professions reinforces the conclusion that there is an unmet demand for professional IT talent within the US.

Exhibit 5: Date H-1B Visa Cap Attained



Utilization of H-1B visa talent has been 100% since 2004, even during the depths of the recent recession.

Current legislation mandates that H-1B visa workers be paid the same as their domestic counterparts, so the primary cost savings to companies are those derived from the absence of long-term benefits because H-1B visa workers' stays are limited to a total of six years. Companies use H-1B visa works because there is a shortage in domestic supply.

Increasing the Domestic Supply IT Talent

> *"If you go out ten, twenty years; there's going to be 120 million jobs that are going to require high skill(s)... and at the rate we're going, we're only going to have 50 million kids to fill those jobs which means 70 million are going to be filled by children from China and India."*[14]

With this provocative statement, made at a 2011 forum on the state of public education, Mayor Kevin Johnson of Sacramento succinctly summarized the need for increasing the US domestic supply of IT talent to meet the growing demand. In the near-term, there are few options but to utilize existing supply, including foreign H-1B visa workers. In the mid-term, options exist to provide IT training for already skilled workers in related fields and to begin promoting STEM (Science Technology Engineering and Math) education among high school and college students, encouraging them to pursue or declare majors in technical fields. The need to graduate more STEM majors is made more immediate by the high number of STEM degrees being issued overseas, most notably in China which graduated two and a half times more engineers than the US in 2005 according to a Duke University study.[15] The US will become limited in tis ability to perform IT work, both due to a shortage in domestic supply and an increase in work performed abroad.

An examination of US graduation rates in IT fields[16] can be used as a predictor of future domestic supply. In 2008 – 2009 the percentage of Nonresident Aliens receiving bachelor's degrees in IT was greater than that of African Americans (Exhibit 6).[17] During the same period, Nonresident Aliens receiving master's degrees in IT outnumbered resident Whites.[18]

---

[14] Mayor Kevin Johnson *The State of American Education* (forum) February 24, 2011. Clinton School of Public Service. University of Arkansas.

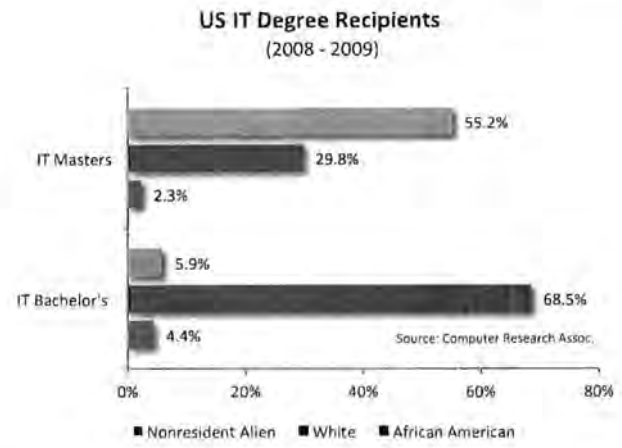
[15] Cited in Bracey, G. *Heard the One about the 600,.000 Chinese Engineers?* The Washington Post. March 21, 2006.

[16] Where IT combines Computer Science, Computer Engineering, and Information majors.

[17] *Computing Degree and Enrollment Trends from 2008 - 2009 CRA Taulbee Survey*, Computer Research Association, 2010.

[18] It is important to note that these statistics are for recipients of know race and nativity. Recipients of unknown race and or nativity account for 24% of bachelor's recipients and 11% of Master's recipients.

Exhibit 6: Date H-1B Visa Cap Attained



Graduation rates for technology majors in 2008 – 2009 illustrate the challenges of developing a diverse domestic supply of technology workers.

Commentary

Clearly a greater number of domestic students of greater diversity need to be encouraged to study STEM disciplines if the US is to increase its supply of this vital IT talent. While utilizing (and possibly increasing the number of) H-1B visa workers provides some short-term relief, a concerted effort between the Government, Academia, and the IT Industry needs to be made in order to increase the mid-term and long-term supply of qualified IT workers. Ideally, any such initiative should include immigration policy to coordinate transient supply and transition foreign workers into a resident domestic supply.

In the mid-term, efforts to increase domestic supply can be aided by training already-skilled professionals in STEM proficiencies. Applied training provided by Corporate and Academic sponsors, complemented by a community of mentors, could transition already talented workers into IT professionals. The bulk of the US's domestic supply must come from education programs, which will require the early promotion of STEM disciplines to encourage stud in these fields. As noted before, human capital is the most valuable asset for technology companies; they, along with the Government and academia, need to make strategic investments in these assets commensurate with their value.